

Report on the

Real Estate Commission

Montgomery, Alabama



Department of Examiners of Public Accounts

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June 22, 2011

Senator Paul Bussman
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Bussman,

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the **Alabama Real Estate Commission** in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the **Alabama Real Estate Commission**, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ronald L. Jones', written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiner:
Robin Hutcheson

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PROFILE

Purpose / Authority

The Alabama Real Estate Commission was established in 1927 by Legislative Act 1927, No. 344 to license real estate brokers throughout the state. Later, passage of the Real Estate License Law (Acts 1950-51, No. 422) of 1951, expanded the original law. In 1953, 1963, and 1982, the law was amended to further regulate persons engaged in the real estate business in Alabama. Currently, the Real Estate Commission operates under the authority of the *Code of Alabama 1975*, Sections 34-27-1 through 34-27-101. Under these enabling statutes, the commission licenses real estate companies, brokers, salespersons, instructors, and schools in Alabama.

<u>Characteristics</u>	
Members and Selection	<p>Nine members (8 real estate professionals and 1 consumer member)</p> <p>Appointed by the governor with the advice and consent of the Senate.</p> <p>With the exception of the consumer member, appointments are made from a list of three persons nominated by the governing body of the Alabama professional real estate society or trade association which has the largest licensee membership. At least one person nominated for each position must not be a member of the real estate society or trade association.</p> <p>Appointment of the consumer member is by direct appointment of the governor from the population at large.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(a)</p>
Term	<ul style="list-style-type: none">• Five-year, staggered terms• No more than 2 consecutive terms• Appointments expire on September 30 of the final year of a term or on the date a successor is appointed and confirmed. <p><i>Code of Alabama 1975</i>, Section 34-27-7(c)</p>
Qualifications	<p>Real estate profession members must:</p> <ul style="list-style-type: none">• Have been a resident and citizen of this state for at least 10 years,• A real estate broker or salesperson for at least 10 years, and• Have not been convicted of a violation of any federal or state real estate license law <p><i>Code of Alabama 1975</i>, Section 34-27-7(c)(d)</p>

	<p>The consumer member must:</p> <ul style="list-style-type: none"> • Be 21 years of age or older, • A resident and citizen of Alabama for at least 10 years, • A registered voter in Alabama, • Owner of real property, and • Have no felony convictions, • Not been a licensed broker or salesperson for the 10 years preceding appointment • Not be related to, or employed by, a real estate licensee. <p><i>Code of Alabama 1975</i>, Section 34-27-7(e)</p>
Racial Representation	<p>There are seven positions each of which must be filled by an appointee from a different congressional district. These members must be licensed real estate brokers or salesmen. There is no racial requirement for these members.</p> <p>There is an eighth position reserved for a consumer member. There is no racial requirement for this member.</p> <p>There is a ninth position reserved for an appointee at large who must be a licensed broker or salesperson. This position must be filled by a black member.</p> <p>Two black members serve on the commission.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(d)</p>
Consumer Representation	<p>The law provides for one consumer member. All other members must be licensed real estate brokers or salespersons.</p> <p>One consumer member is serving.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(e)</p>
Geographical Representation	<p>A position on the board is reserved in the law for each of the seven congressional districts. No two members holding these positions can be from the same congressional district (<i>Code of Alabama 1975</i>, Section 34-27-7(c)).</p> <p>An additional black professional member position is provided in the law, which can be filled from any congressional district, but the position must rotate among the districts. (<i>Code of Alabama 1975</i>, Section 34-27-7(d))</p> <p>An additional consumer member position is provided in the law, which can be filled from any congressional district, but the position must rotate among the districts (<i>Code of Alabama 1975</i>, Section 34-27-7(e)).</p>

Other Representation	None																																																																																										
Compensation	Three hundred dollars (\$300) per month. Members receive, "...the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission." <i>Code of Alabama 1975, Section 34-27-7(g)</i>																																																																																										
<u>Operations</u>																																																																																											
Administrator	D. Philip Lasater, Executive Director. Annual Salary of \$123,436.08, set by the commissioners and approved by the State Personnel Department.																																																																																										
Location	1201 Carmichael Way Montgomery, AL 36106 Office Hours: Monday – Friday 7:30 am – 4:30 pm																																																																																										
Examinations	<p>The commission contracts with Applied Measurement Professionals (AMP) in Olathe, KS to prepare, administer, and grade the exams. Examination fees are paid directly to AMP, currently \$73. The computer based exams are given at H&R Block testing centers in Athens, Huntsville, Birmingham (2), Montgomery, and Mobile.</p> <table><tr><th colspan="9"><u>Salesperson Examinations</u></th></tr><tr><th></th><th colspan="2">2007</th><th colspan="2">2008</th><th colspan="2">2009</th><th colspan="2">2010</th></tr><tr><td>Passed</td><td>2723</td><td>50.7%</td><td>1837</td><td>49.9%</td><td>1110</td><td>53.8%</td><td>864</td><td>49.7%</td></tr><tr><td>Failed</td><td>2651</td><td>49.3%</td><td>1846</td><td>50.1%</td><td>955</td><td>46.2%</td><td>876</td><td>50.3%</td></tr><tr><td>Total</td><td>5374</td><td></td><td>3683</td><td></td><td>2065</td><td></td><td>1740</td><td></td></tr></table> <table><tr><th colspan="9"><u>Broker Examinations</u></th></tr><tr><th></th><th colspan="2">2007</th><th colspan="2">2008*</th><th colspan="2">2009</th><th colspan="2">2010</th></tr><tr><td>Passed</td><td>1281</td><td>61.3%</td><td>152</td><td>73.4%</td><td>186</td><td>69.1%</td><td>213</td><td>76.3%</td></tr><tr><td>Failed</td><td>808</td><td>38.7%</td><td>55</td><td>26.6%</td><td>83</td><td>30.9%</td><td>66</td><td>23.7%</td></tr><tr><td>Total</td><td>2089</td><td></td><td>207</td><td></td><td>269</td><td></td><td>279</td><td></td></tr></table> <p>*Requirement for a 60-hour broker prelicense course was instituted effective Oct. 1, 2007.</p> <p>Detailed information on Pass / Fail rates for Alabama Public Colleges and Private Programs is included in the appendices of this report.</p>	<u>Salesperson Examinations</u>										2007		2008		2009		2010		Passed	2723	50.7%	1837	49.9%	1110	53.8%	864	49.7%	Failed	2651	49.3%	1846	50.1%	955	46.2%	876	50.3%	Total	5374		3683		2065		1740		<u>Broker Examinations</u>										2007		2008*		2009		2010		Passed	1281	61.3%	152	73.4%	186	69.1%	213	76.3%	Failed	808	38.7%	55	26.6%	83	30.9%	66	23.7%	Total	2089		207		269		279	
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Licensees		2007FY(*)	2008FY(*)	2009FY(*)	2010(*)FY
	Active Salesperson (including reciprocal)	12,957	10,682	11,278	9,069
	Inactive Salesperson (including reciprocal)	6,022	5,538	7,184	5,504
	Active Broker (including reciprocal)	7,315	6,832	7,486	6,449
	Inactive Broker (including reciprocal)	1,527	1,674	1,815	1,659
	Active Company (including Branches)	4,258	3,821	4,126	3,569
	Inactive Company (including Branches)	223	15	317	102
	Active Temporary	1,231	785	456	389
	Inactive Temporary	443	420	246	191
	Pre/Post Instructor (Active and Inactive)	207	208	199	172
	CE Instructor (Active and Inactive)	246	197	264	212
	School Administrator (Active and Inactive)	117	86	72	70
	Licensed School (Active and Inactive)*	-	-	23	61
	TOTAL	34,546	30,258	33,466	27,447
	*Began licensing schools in FY 2009				
Source: Commission staff					
(*)As of October 1 of each year. Licenses are renewed every two years in odd-numbered years. Data presented does not include lapsed licenses that can be renewed within one year.					
Reciprocity	<p>Yes, authorized by law under the following conditions:</p> <p>Applicant for a reciprocal license must submit proof of current real estate license in another state as evidenced by a certificate of licensure.</p> <p>Applicant for a reciprocal license must show proof of completion of at least six hours of course work in Alabama real estate.</p> <p>Applicant for a reciprocal license must pass a reasonable written examination prepared by the commission on the subject of Alabama real estate.</p> <p><i>Code of Alabama 1975, Section 34-27-32(b)(1)</i></p>				

Renewals	<p><u>Must Renew Licenses Biennially in Odd Numbered Years</u></p> <ul style="list-style-type: none"> • Companies • Brokers • Salespersons • Instructors • Schools • Courses <p><i>Code of Alabama 1975</i>, Section 34-27-35(c) (1& 2) <i>Rule 790-X-1-.10(1)</i></p> <p><u>Biennial Renewal Grace Period</u></p> <ul style="list-style-type: none"> • Application for renewal must be filed on or before August 31 of the renewal year. • If filed between September 1 and September 30, a late penalty of \$150 must be paid in addition to renewal fees. • If not filed by September 30 deadline, the license is placed on inactive status on October 1. • An expired license (inactive) may be renewed during the 12 month period following the license period during which the license was current. • If not renewed before the end of the 12 month period following the license period for which the license was issued, the license becomes lapsed, and application for license is subject to all requirements applicable to persons who have never been licensed. <p>A license maintained in inactive status must be renewed in the same manner as an active license.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-35(g)(i)</p>
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Renewals (cntd)	<p><u>Timeshare Must Renew Annually</u></p> <ul style="list-style-type: none"> • Timeshare project registration • Timeshare license <p><i>Code of Alabama 1975</i>, Section 34-27-64(a), 66(d)(e)(h)</p> <p><u>Timeshare Annual Renewal Grace Period</u></p> <ul style="list-style-type: none"> • Timesharing sales licenses are due to be renewed annually on or before August 31. • September 30 shall be the annual expiration date for such licenses. • Any license renewed after August 31 and prior to January 1 of the following year shall be subject to a penalty fee of \$15 in addition to the annual license fee. • On January 1 of the year following the expiration of the license the license may no longer be renewed and the former license holder shall be required to again meet the requirements of an original applicant. <p><i>Code of Alabama 1975</i>, Section 34-27-64(a), 66(d)(e)(h)</p> <p>-----</p> <p style="text-align: center;"><u>ONLINE RENEWAL (ALL TYPES)</u></p> <p style="text-align: center;">FY08 - 74% FY10 - 76%</p> <p>Source: Commission Staff</p>								
Continuing Education	<p>Salespersons and brokers – 15 hours per license period.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-35(j)(1)</p> <p>Pre and Post license instructors – 12 hours of instructor training per license period.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-6(l) <i>Rule 790-X-1-.10(8)(a)</i></p>								
Employees	<table> <tr> <td>1</td><td>Exempt (from Merit System)</td></tr> <tr> <td>2</td><td>Unclassified Merit System</td></tr> <tr> <td>31</td><td>Classified Merit system</td></tr> <tr> <td>34</td><td>Total</td></tr> </table> <p>As of February 2011</p> <p><i>Code of Alabama 1975</i>, Section 34-27-7(h)</p>	1	Exempt (from Merit System)	2	Unclassified Merit System	31	Classified Merit system	34	Total
1	Exempt (from Merit System)								
2	Unclassified Merit System								
31	Classified Merit system								
34	Total								

Legal Counsel	Charles Sowell and Chris Booth Assistant Attorneys General – both employees of the commission
Subpoena Power	Yes, both witnesses and records <i>Code of Alabama 1975</i> , Sections 34-27-36(a) and 34-27-37(b)
Internet Presence	<p>Website - List of information categories provided on agency website at www.arec.alabama.gov</p> <p>Tabs</p> <ul style="list-style-type: none"> • About Us • Legal • Licensing • Education • Online Services • Forms & Information <p>Quick Links</p> <ul style="list-style-type: none"> • Alabama License Law Book Order Form • Change Personal Contact Information • Change Company Telephone Email • Check CE Credit • Deadlines • Fee Schedule • License Law • Licensee Service Survey • Related links <p>Consumers</p> <ul style="list-style-type: none"> • Complaint Form • Consumer Guide Order Form • Customer Service Survey • List Request Service • Report Unlicensed Real Estate Activity <p>Website also contains a scrolling window with information for licensees and / or consumers</p>
Attended Board Member Training	Assistant. Director 10 Staff members 4 Commission Members

<u>Financial</u>	
Source of Funds	Fees, fines, charges, and other money collected by the commission in carrying out its statutory responsibilities.
State Treasury	Yes, details in the financial section of this report.
Required Distributions	<p>Fund 372 interest income must be divided equally between the commission's operating fund and the University of Alabama Chair for Real Estate Research and Development.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-31(f)</p>
Unused Funds	<p>Retained by the commission.</p> <p><i>Code of Alabama 1975</i>, Section 34-27-4</p>

SIGNIFICANT ISSUES

Significant Issue 2011-01

The commission did not collect the entire social security number from applicants who apply to renew as a salesperson, broker or company license, as required by law.

The *U.S. Code 42* Section 666(a)(13)(a) and the *Code of Alabama 1975* Section 30-3-194(a) require that the Social Security number of the applicant must be recorded on any application for a professional license, including renewal applications. The attorney general in his opinion 2010-074 to the Board of Licensure for Professional Engineers and Land Surveyors states that the board must collect the entire Social Security number for each new or renewal license. The opinion further states that when a number is needed for identification purposes, the last four digits of a Social Security number may be used. Opinion 2010-74 is included in the appendices of this report.

Significant Issue 2011 – 02

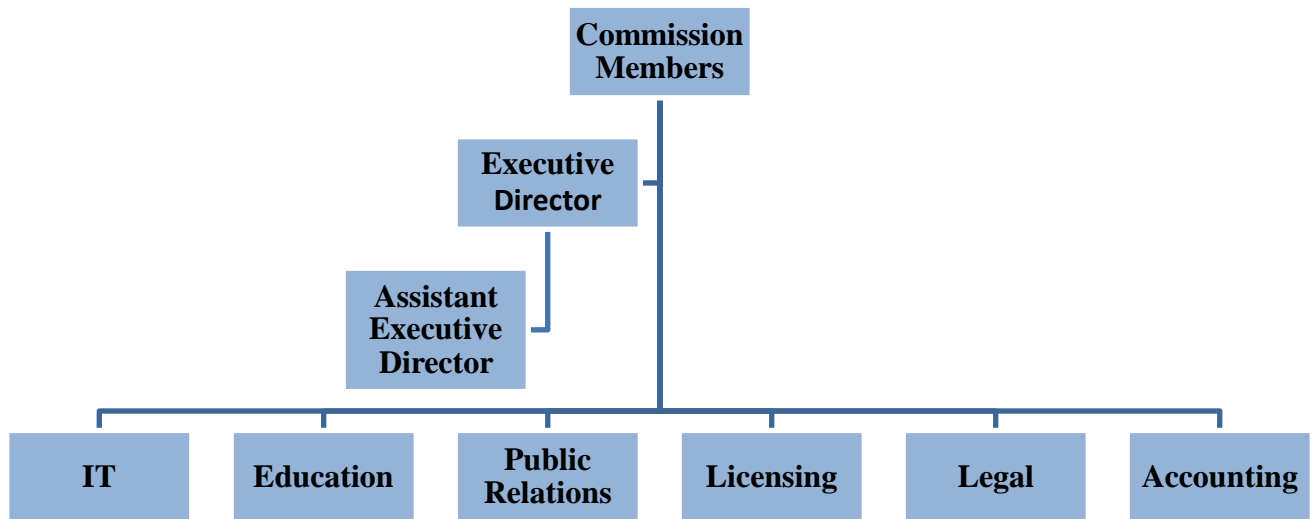
Deteriorating economic conditions appear to have significantly reduced fees collected by the commission.

- In calendar year 2007 there were 55,698 homes sold in Alabama. In calendar year 2010 the number of homes sold in Alabama was 36,234, a decrease of 19,464 or 34.95%. (Source: Alabama Center for Real Estate, The University of Alabama website www.acre.cba.us.edu)
- In calendar year 2007, the median selling price of a home was \$130,033.50. In calendar year 2010 the median selling price of a home was \$122,733.00, a decrease of \$7,260.50 or 5.91%.. (Source: Alabama Center for Real Estate, The University of Alabama website www.acre.cba.us.edu)
- From calendar year 2007 to fiscal year 2010 the number of persons taking the salesperson and broker examinations in each fiscal year decreased by 5,184 or 266.80% making 2010 the year in which the least number of exams have been given since 1982.(Source: Alabama Real Estate Commission Assistant Director)
- Compared to the FY2006/07-2007/08 two-year licensing period, licensing fees collected by the Real Estate Commission have declined by \$1,842,611.30 or 23.8% for the FY 2008/09-2009/10 licensing period (Source: commission records)

STATUS OF PRIOR FINDINGS / SIGNIFICANT ISSUES

All prior findings / significant issues have been resolved.

ORGANIZATION



PERSONNEL

As of February 2011, the commission employed 34 full time persons, consisting of one exempt employee, two unclassified merit system employee and 31 classified merit system employees. Charles Sowell and Chris Booth, Assistant Attorneys General, are employed by the commission within the state's Merit System to provide legal services.

Schedule of Employees By Merit System Classification/Sex/Race							
	#	B/M	W/M	B/F	W/F	O/M	O/F
<u>Exempt</u>							
Executive Director	1		1				
<u>Merit System</u>							
<i>Unclassified</i>					1		
Assistant Executive Director	1				1		
Attorney	1		1				
<i>Classified</i>							
10611 – Accountant	1			1			
10198 – ASAIII	4			2	2		
10612 – Staff Accountant	4	1		1	2		
60320 – Special Investigator	3	1	2				
60322 – Special Investigator – Chief	1		1				
11978 – Departmental Operations Spec.	1			1			
30122 – Education Specialist	3		1		2		
10529 – IT Systems Specialist Sr.	1				1		

10515 – Programmer	1		1				
11042 – Public Information Spec.	1			1			
10613 – Senior Accountant	1				1		
10516 – Programmer Analyst Associate	1		1				
11043 – Public Information Manager	1			1			
10196 – ASA I	2	1		1			
11998 – Real Estate Licensing Admin.	1	1					
11530 – Attorney I/II	1		1				
10528 – IT Systems Specialist	1		1				
30123 – Education Administrator	1		1				
10526 – IT Systems Technician Sr.	1		1				
80112 – Building Custodian II	1		1				
Total	34	4	13	8	9		

B/M=black male, W/M=white male, B/F=black female, W/F=white female, O/M=other male, O/F=other female

PERFORMANCE CHARACTERISTICS

Number of Licensees per Employee as of February 1, 2011 - 994

Operating Disbursements per Licensee (2009-10)- \$96.18

Number of Persons Per Licensee in Alabama and Surrounding States

	Alabama(*)	Florida	Georgia	Mississippi	Tennessee
Brokers	9,170	66,067	20,938	4,497	26,092*
Salespersons	19,209	200,809	59,482	6,520	
Timeshare	25	**	**	**	192
Companies	5,219	22,534	12,136	2,049	4,274
Schools	174	364	342	15	124
Total Number of Licensees	33,797	289,774	92,898	13,081	30,682
¹ Population Est.	4,779,736	18,801,310	9,687,653	2,967,297	6,346,105
Number of Persons per Licensee	141.42	64.88	104.28	226.84	206.83

¹2010 U.S. Census

*Tennessee combines Brokers and Salespersons, breakdown not available

**No separate Timeshare licenses

As of February 1, 2011

(*)Source-staff – includes lapsed licenses that can be renewed within one year

Notification to Licensee of Commission Decisions to Amend Administrative Rules

The commission complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. In addition, the commission also gives notice of proposed rule changes and public hearings by doing the following:

- Fax a synopsis of proposed rule changes to the Alabama Association of REALTORS®.
- Fax a synopsis of proposed rule changes to each local Association of REALTORS® for distribution to members.
- Notify instructors by one of the following methods:
 - through a special mailing
 - an email
 - in the Educator (the commission's newsletter for approved instructors and administrators)
- Notice of public hearings and rule changes in their entirety are placed on the commission's website .

Inspections/Audits by the Commission

Company Audits - Real Estate Company audits are done by 3 auditors, one in north Alabama, one in central Alabama and one in south Alabama to determine compliance with applicable laws and audit funds held for escrow purposes. Auditors receive a list of those which need to be completed; the auditor randomly and without notice selects companies to visit.

The auditors inspect / audit:

- Place of business signage
- Real Estate Licenses
- R.E.C.A.D (Real Estate Consumer Agency Disclosure) Office policy signed by all licensees
- Location of closed contracts for the past 3 years
- All pending sales files
- Location of all lease contracts, management agreements and rental records
- Copies of the past 6 months bank statements with cancelled checks for all *escrow fund accounts
- Copies of the latest bank reconciliation performed on all escrow accounts if available
- Checkbook and or computer check register for all escrow accounts
- Duplicate deposit tickets with validated bank receipt for all escrow accounts
- Any lists or ledgers documenting the funds held for escrow purposes.

*Escrow funds include sales binders, security deposits, rent receipts, and or any other funds held for members of the public

Schedule of Real Estate Company Audits 2007 through 2010 FY				
Inspections	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Pass	525	539	586	623
Fail (1)	13	8	8	7
Total	538	545	593	629
Source: Chief Inspector for the Commission				

(1) Failed audits results in formal complaints being brought by the commission. The formal complaint can result in a licensee surrendering his or her license voluntarily or receiving a hearing at which the commission can fine, suspend, and / or revoke the license.

School Audits: According to the Education Administrator for the Real Estate Commission, Schools are required to keep documentation on file for 4 years. Audits are scheduled to insure that school administrators are available and prepared. The auditors use the commission's database to select random individuals who are identified as having completed coursework at that particular school. The records for those individuals are then checked during the audit to verify all required documentation.

Failure of schools is rare. Audits may reveal some documents missing but the auditors bring the matter to the attention of the administrator and allow time for the problem to be corrected. The only condition in which failure of a school could occur would be the inability of the school to locate requested student records after multiple requests or to refuse to make the requested corrections. If this occurs, a formal complaint is filed by the commission which requires a hearing.

Schedule of School Audits 2007 through 201007 FY				
Inspections	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Pass	28	58	41	17
Fail *	0	1	1	0
Total	28	59	42	17
Source: Education Division Director				

*A failed audit results in a formal complaint brought by the commission.

Instructor Audits: Instructor audits are conducted to determine if instructors are teaching appropriate material in the appropriate manner. Instructor audits are not announced in advance. (Commission Rules 790-X-1-.14 - .16)

Schedule of Instructor Audits 2007 through 2010 FY				
Inspections	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Pass	65	83	72	95
Fail *	0	0	0	0
Total	65	83	72	95
Source: Education Division Director				

*A failed audit results in a formal complaint brought by the commission.

COMPLAINT HANDLING

The *Code of Alabama 1975*, Section 34-27-36 authorizes investigation of the actions or records of a licensee. The commission's administrative rule 790-X-1-.17 addresses the actions for which disciplinary action may commence. The commission's administrative rules 790-X-3-.06, 790-X-3-.07; and 790-X-3-.10 address probable cause determination, hearings, and requirements of a formal complaint.

Initial Contact/Documentation	Complaints may be filed by: consumers, licensees, commission staff, and commission members. The commission receives complaints by mail, email, fax, or hand delivered. No specific form is required, however one is provided on the commission's website. The complainant receives a letter of receipt as soon as the complaint is received and assigned to an investigator.
Anonymous Complaints	The commission accepts anonymous complaints.
Investigative Process	One of four investigators is assigned the complaint when received at the office. Commission member do not investigate any complaints.
Probable Cause Determination	The investigator brings evidence in the form of statements and documents to one of the staff attorneys. The attorney applies the evidence to the licensing law to determine probable cause per Rule 790-X-3-.06. If there is probable cause of a law or rule violation, a formal complaint with allegations of fact and applicable law or administrative rule violated is served on the accused.
Resolution without formal Hearing	There are no resolutions without a hearing. If the accused does not wish to attend the hearing, admits to the alleged wrongdoing, and is willing to accept the commission's decision, the commission staff brings the matter before the commission at the next hearing as a no contest plea.
Formal Hearing	The hearings are presided over by a hearing officer. The commission is represented by attorneys on staff.
Notification of Resolution to the Complainant	Complainants are notified of the resolution of the complaint.

Source: Real Estate Commission Staff Attorney

Schedule of Formal Complaints Resolved 2007 through 2010 FY					
Year / Number Received	Year / Number Resolved				
	2007	2008	2009	2010	Pending
2007 / 249	235	13	1	0	0
2008 / 308		290	17	1	0
2009 / 245			224	18	3
2010 / 232				220	12

Source: Real Estate Commission Staff Attorney

Average Time to Resolve Complaints – 26.23 days

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Other entities involved in the regulation of persons who in the practice of their professions engage in activities normally licensed by the Real Estate Commission are as follows:

Board of Auctioneers.

Auctioneers licensed by the Board of Auctioneers must have a license to practice auctioneering as well as a real estate license in order to auction, offer, or agree to auction, real estate situated within the Alabama.

State Bar

Attorneys regulated by the State Bar who, in carrying out duties as an attorney-at-law, engage in activities normally regulated by the Real Estate Commission are exempt from licensure by the commission.

AAR – (Alabama Association of Realtors) is the largest statewide organization of real estate professionals. AAR members are united by adherence to a Code of Ethics, and its members work as real estate professionals in the sale, lease, appraisal and development of residential, rural, and resort properties throughout Alabama.

ARELLO – (Association of Real Estate License Law Officials) support jurisdictions in the administration and enforcement of real estate license laws to promote and protect the public interest.

REEA – (Real Estate Educators Association) provides resources and opportunities for professional development to individuals and organizations involved in Real Estate education. Ryan Adair, Education Division Director for the Commission is on the Board of Directors of the REEA.

NAR – (National Association of Realtors) provides a facility for professional development, research, and exchange of information among its members.

AREREC – (Alabama Real Estate and Research and Education Center) a research and education facility located at the University of Alabama designed to support Alabama's real estate community and economic development efforts.

AARB - (Alabama Association of Regulatory Boards) strengthen communication between state

boards and their investigators; to promote the public awareness of professional licensing boards; to supply continuing education and training to board investigators; to assist in the coordination of the boards natural disaster policies and the promotion of elder fraud protection; to improve communication between the boards, state, and local government law enforcement agencies.

SMART GOVERNING

As a part of Alabama's SMART Governing program, each state agency is required to develop and report to the Department of Finance on its performance toward achieving stated measurable goals and objectives. By definition, goals are long term targets to be accomplished through the achievement of directly related annual objectives. The reported performance of each agency presented on the Internet website: <http://www.smart.alabama.gov/ReportsApp/FormSelect.aspx> . We reviewed the commission's reports and our comments are as follows.

2010 FY				
Goals		Comments		
To protect the public by auditing 550 real estate companies per year by 2015.		Goal appears appropriate.		
To protect the public by auditing 140 schools per year offering non-college credit courses and instructors actively teaching by 2015.		Goal appears appropriate.		
To enhance communication with stakeholders (licensees, education providers, and consumers) by making at least 40 points of contact on average with targeted groups per year by 2015.		Goal appears appropriate.		
Objectives	Unit of Measure	Target	Reported Performance	Comments
(O1-Quality) Auditors will complete 550 audits	# of Audits	550	629	Objective appears appropriate in form, and is consistent with the related goal. Data reported on the performance report can be recreated from available records.
(O2-Efficiency) At least 90% of complaints will be investigated and probable cause determined within 90 days of receipt of complaint for complaints completed within that quarter.	% of complaints investigated within 90 days	0.9	.96	Objective appears appropriate in form; <i>however there is no related goal.</i> Data reported on the performance report can be recreated from available records.

(O1a-Quality) Auditors will have completed 125 education audits.	# of Audits	115	115	Objective appears appropriate in form, and is consistent with the related goal. Data reported on the performance report can be recreated from available records.
(O1b-Quality) Make at least 60 points of contact on average with targeted groups per year.	# of Points of Contact	60	59	Objective appears appropriate in form, and is consistent with the related goal. Data reported on the performance report can be recreated from available records

2011 FY				
Goals		Comments		
To protect the public by auditing 575 real estate companies per year by 2015.		Goal appears appropriate.		
To protect the public by auditing 130 schools per year offering non-college credit courses and instructors actively teaching by 2015.		Goal appears appropriate.		
To enhance communication with stakeholders (licensees, education providers, and consumers) by making at least 50 points of contact on average with targeted groups per year by 2015.		Goal appears appropriate.		
Objectives	Unit of Measure	Target	Reported Performance	Comments
(O1-Quality) Auditors will complete 575 audits.	# of Audits	575	N/A – reporting year not finished	Objective appears appropriate in form, and is consistent with the related goal.
(O2-Efficiency) At least 90% of complaints concluded in the prior quarter will be investigated and probable cause determined within 90 days of receipt of complaint.	% of complaints investigated within 90 days	.90	N/A– reporting year not finished	Objective appears appropriate in form; <i>however there is no related goal.</i>
(O1a-Quality) Auditors will have completed 85 education audits.	# of Audits	85	N/A– reporting year not finished	Objective appears appropriate in form, and is consistent with the related goal.

(O1b-Quality) Make at least 45 points of contact on average with targeted groups per year.	# of Points of Contact	45	N/A—reporting year not finished	Objective appears appropriate in form, and is consistent with the related goal. Data reported on the performance report can be recreated from available records
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FINANCIAL INFORMATION

Source of Funds

Fees and other money lawfully collected by the commission in the course of administering its statutory duties.

Funds / Accounts Descriptions

The commission operates through the State Treasury from the following funds:

Fund 371 – Real Estate Commission Fund – established by the *Code of Alabama 1975*, Section 34-27-4 as the commission’s operating fund. Fund 371 is used to accumulate and disburse all fees, fines, charges, and other money collected by the commission, except recovery fund (Fund 372) fees and portions of multi-year license fees held in escrow (in Fund 569) to fund operations during the second year of the commission’s two-year licensing cycle. The commission retains unobligated fund balances at year end.

Fund 372 – Real Estate Recovery Fund – established by the *Code of Alabama 1975*, Section 34-37-31 to collect and accumulate fees paid in lieu of bond by brokers and salespersons, except time-share brokers and salespersons. Aggrieved parties may recover damages from the fund arising from violations of the real estate licensing law by real estate brokers or salespersons. In order to recover damages from the fund, the aggrieved party must prevail in a lawsuit against a real estate broker or salesperson and must obtain an order from the court for payment from the recovery fund.

Fund balances are invested, with interest income required by law to be divided equally between the commission’s operating fund (Fund 371) and the University of Alabama Chair for Real Estate Research and Development. *Code of Alabama 1975*, section 34-27-31(f).

The balance in the fund (including invested amounts) at September 30, 2010 was \$1,048,724.58.

Fund 569 – Real Estate Commission Proportionate Fund – established by the *Code of Alabama 1975*, Section 34-27-4 to hold a portion of license revenues in escrow for use during the second year of the commission’s two year licensing cycle. Amounts necessary for operations are transferred to the commission’s operating fund (Fund 371) as needed. Balances in the fund are invested. Interest from investments must be deposited into the commission’s operating fund (Fund 371).

Schedule of Fees

FEE TYPE / PURPOSE	STATUTORY AUTHORITY	RULE	AMOUNT AUTHORIZED	AMOUNT COLLECTED
Salespersons				
Temporary(renewal not permitted)	34-27-35(c)(1)		\$150.00	\$150.00
Original	34-27-35(c)(2)		\$85.00 per year	\$85.00 per year
Renewal	34-27-35(c)(2)		\$85.00 per year	\$85.00 per year
Reciprocal	34-27-32(b)(1) ¹ 34-27-35(c)(2)		\$85.00	\$85.00
Late Renewal Penalty	34-27-35(g)		\$150.00	\$150.00
License Transfer Fee	34-27-34(b)		\$25.00	\$25.00
Change of Personal Name of Salesperson or Associate Broker	34-27-34(b)(3)		\$25.00	\$25.00
Change of Business Location	34-27-34(b)(4)		\$25.00	\$25.00
Change of Business Name	34-27-34(b)(5)		\$25.00	\$25.00
Change of Status (Inactive to Active)	34-27-34(b)(6)		\$25.00	\$25.00
Examination Fee	34-27-33(a)(1)		Fees are submitted to Applied Measurement Professionals Directly.	Fees are submitted to Applied Measurement Professionals Directly.
Recovery Fund Temporary	34-27-33(c)(3)		\$30.00	\$30.00
Recovery Fund Original	34-27-31(c)(1)		\$30.00	\$30.00
Recovery Fund less than \$500,000	34-27-31(d)		\$30.00	\$30.00
Research & Education - Original (One time)	34-27-35(e)		\$30.00	\$30.00
Research & Education - Renewal	34-27-35(d)		\$2.50 per year	\$2.50 per year

Fines	34-27-36(a)		Not less than \$100.00 / not more than \$2,500	Not less than \$100.00 / not more than \$2,500
Brokers (Multiple Broker, Temporary Broker, Reciprocal Broker)				
Original	34-27-35(c)(1)		\$150.00	\$150.00
Renewal	34-27-35(c)(2)		\$95.00 per year	\$95.00 per year
Multiple Broker Renewal	34-27-35(d)			
Late Renewal Penalty	34-27-35(g)		\$150.00	\$150.00
License Transfer Fee	34-27-34(b)	790-X-3-.01	\$25.00	\$25.00
Change of Qualifying Broker	34-27-34(b)(1)		\$25.00	\$25.00
Change of Personal Name of a Qualifying Broker	34-27-34(b)(2)		\$25.00	\$25.00
Change of Business Location	34-27-34(b)(4)		\$25.00	\$25.00
Change of Business Name	34-27-34(b)(5)		\$25.00	\$25.00
Change of Status (Inactive to Active)	34-27-34(b)(6)		\$25.00	\$25.00
Examination Fee	34-27-33(a)(1)		Fees are submitted to Applied Measurement Professionals Directly.	Fees are submitted to Applied Measurement Professionals Directly.
Recovery Fund - Original	34-27-31(c)(1)		\$30.00	\$30.00
Recovery Fund less than \$500,000	34-27-31(d)		\$30.00	\$30.00
Research & Education - Original (One time)	34-27-35(e)		\$30.00	\$30.00
Research & Education - Renewal	34-27-35(d)		\$2.50 per year	\$2.50 per year
Fines	34-27-36(a)		Not less than \$100.00 / not more than \$2,500	Not less than \$100.00 / not more than \$2,500

Companies:				
Original Licensure	34-27-35(c)(2)		\$85.00 per year	\$85.00 per year
Renewal	34-27-35(c)(2)		\$85.00 per year	\$85.00 per year
Change of Business Location	34-27-34(b)(4)		\$25.00	\$25.00
Change of Business Name	34-27-34(b)(5)		\$25.00	\$25.00
Changes in qualifying broker by a company or sole proprietorship	34-27-34(b)(1)		\$25.00	\$25.00
Vacation Timeshare Sales License				
Project Registration	34-27-64(a)		\$750.00	\$750.00
Project Registration Renewal	34-27-64(a)		\$750.00	\$750.00
Out of State Registration	34-27-64(b)		\$750.00	\$750.00
Out of State Renewal	34-27-64(b)		\$750.00	\$750.00
License	34-27-66(d)		\$50.00	\$50.00
Renewal	34-27-66(e)		\$50.00	\$50.00
Amendments	34-27-64(a)		\$20.00	\$20.00
Examination Fee	34-27-66(d)		\$75.00	\$75.00
Out of State Timeshare Audit	34-27-64(b)		\$500 plus actual expenses	\$500 plus actual expenses
Late Renewal	34-27-66(e)		\$15.00	\$15.00
Timeshare Transfer Fee	34-27-66(h)		\$50.00	\$50.00
Timeshare Advertising Review	34-27-64(a)		\$20.00	\$20.00
Changes in qualifying broker	34-27-66(h)		\$50.00	\$50.00
Changes in name and/or address of vacation timeshare plan	34-27-66(h)		\$50.00	\$50.00
Changes in Name of Licensee	34-27-66(h)		\$50.00	\$50.00
Change of Employment	34-27-66(h)		\$50.00	\$50.00
Change activation of inactive license	34-27-66(h)		\$50.00	\$50.00

Sellers Penalty	34-27-68(b)(9)		\$100.00 - \$2000.00	\$100.00 - \$2000.00
Fines	34-27-61		\$25.00 - \$1000.00	\$25.00 - \$1000.00
Other Fees:				
Criminal Record Search	34-27-32(J)		Amount charged to the commission by the Dept. of Public Safety	Amount charged to the commission by the Dept. of Public Safety
Copies	34-27-32(k)		\$10.00	\$10.00
Licensee Listing	34-27-32(k)		\$10.00	\$10.00
Bad Check Charge	8-8-15(b)	790-X-3-.02	\$30.00	Maximum allowed by 8-8-15
Certification of Licensure	34-27-32(k)		\$10.00	\$10.00
Education Institution:				
Pre/Post Instructor Approval	34-27-6 (i)	790-X-1-.10(2)	Not to exceed \$50.00 per year	\$50.00 per year
Pre/Post Instructor Renewal	34-27-6 (i)	790-X-1-.10(8)	Not to exceed \$50.00 per year	\$50.00 per year
CE Instructor Approval	34-27-6 (i)	790-X-1-.10(2)	Not to exceed \$50.00 per year	\$25.00 per year
CE Instructor Renewal	34-27-6 (i)	790-X-1-.10(8)	Not to exceed \$50.00 per year	\$25.00 per year
C.E. Course Approval	34-27-6 (j)	790-X-1-.10(3)	Not to exceed \$100.00	\$100.00
C.E. Course Renewal	34-27-6(j)(k)	790-X-1-.10(9)	Not to exceed \$100.00	\$50.00
School License	34-27-6(d)	790-X-1-.10(4)	\$250.00 per year for each year or portion of a year	\$250.00 per year
School License Renewal	34-27-6(d)	790-X-1-.10(11)	\$125.00 per year	\$125.00 per year

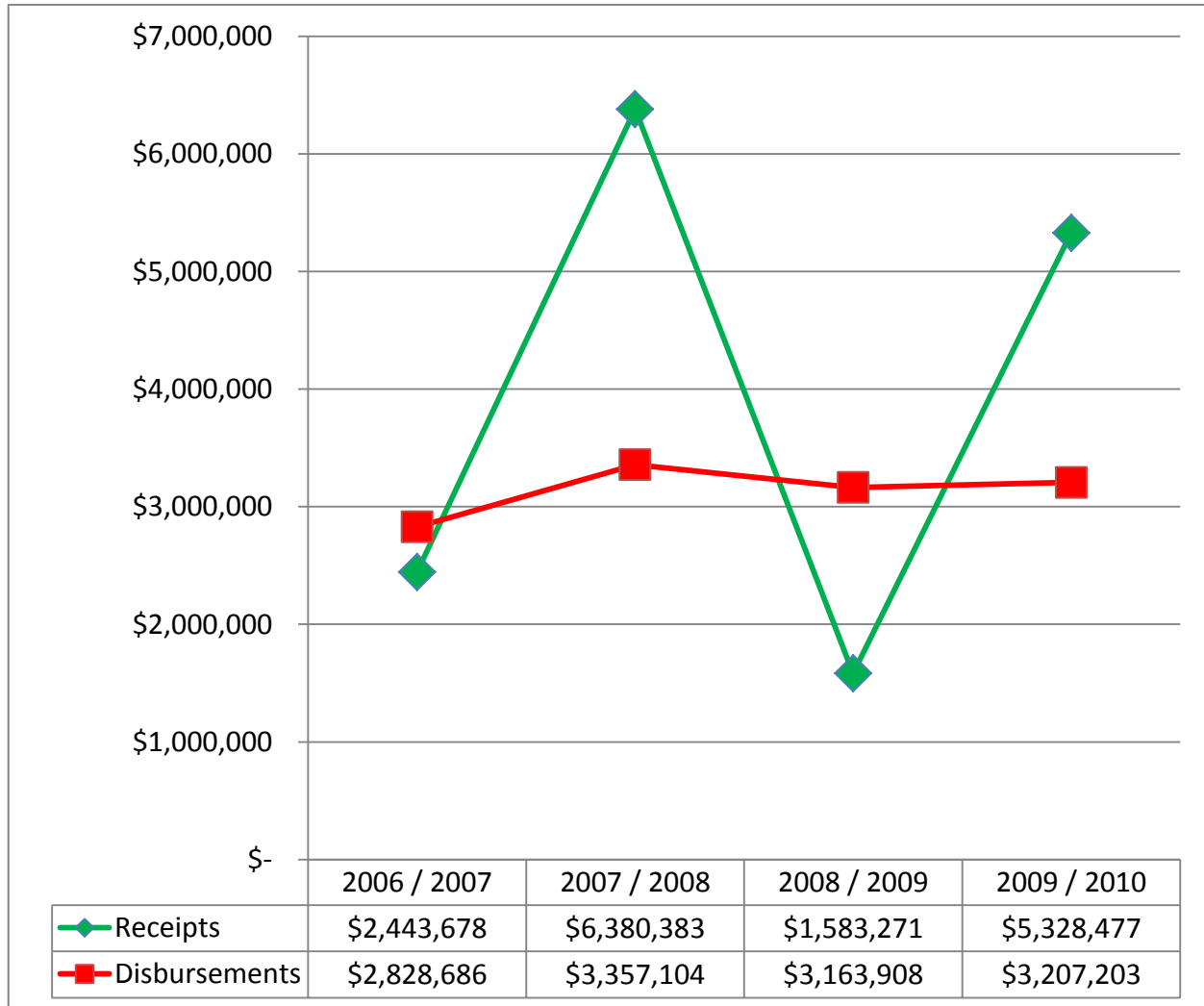
Schedule of Cash Receipts, Disbursements, and Balances

October 1, 2006 – September 30, 2010

(Real Estate Commission Fund 371 and Real Estate Commission Proportionate Fund 569)

				FY 2009-2010	FY 2008-2009	FY 2007-2008	FY 2006-2007
<u>Receipts</u>							
Licensing Fees				\$ 4,763,673.01	\$ 1,144,729.95	\$ 5,956,522.05	\$ 1,794,492.21
Research & Education				144,760.00	54,890.00	195,805.00	129,895.00
Fines and Penalties				146,000.00	214,380.00	99,300.00	173,080.00
Interest Income				258,853.60	159,856.45	111,571.74	329,113.62
Miscellaneous				3,810.00	650.00	1,780.00	1,980.00
Docket and Copy Fees - Courts				8,340.00	7,745.00	11,363.60	11,072.50
Bad Check Penalties				630.00	1,020.00	1,020.00	930.00
Salvage Equipment and Other Pro.				1,439.64	-	2,710.65	3,104.21
Recyclable Materials				-	-	-	10.29
Prior Period Adjustments				-	-	310.00	-
Reimbursements not Otherwise Classified				970.40	-	-	-
Total Receipts				5,328,476.65	1,583,271.40	6,380,383.04	2,443,677.83
<u>Disbursements</u>							
				1,899,202.26	1,852,755.45	1,852,359.98	1,723,317.17
Personnel				659,116.92	638,202.06	611,257.66	565,426.94
Employee Benefits				82,970.35	96,158.96	83,642.80	78,307.63
Travel in State				54,962.03	31,885.27	48,895.41	51,212.80
Travel out of State				18,821.60	15,608.16	15,513.27	14,120.91
Repairs and Maintenance				36,781.91	18,956.78	14,198.26	14,053.58
Rentals and Leases				119,597.11	123,212.78	121,452.41	90,254.41
Utilities and Communication				110,938.62	169,432.65	206,229.76	88,871.95
Professional Services				113,300.92	114,313.50	116,496.80	77,001.40
Supplies and Operating Expenses				4,370.35	4,859.24	7,550.39	5,522.36
Transportation Equipment Operation				-	44,086.26	-	26,041.78
Grants & Benefits				2,400.00	17,366.25	186,629.35	-
Capital Outlay				16,143.25	-	-	28,798.78
Transportation Equipment Purchases				88,597.41	37,070.21	92,878.31	65,756.06
Other Equipment Purchases				43,330.00	173,115.00	99,440.00	232,655.00
Total Disbursements				3,250,532.73	3,337,022.57	3,456,544.40	3,061,340.77
Excess of Receipts over Disbursements				2,077,943.92	(1,753,751.17)	2,923,838.64	(617,662.94)
Cash Balance at Beginning of Year				8,273,686.28	10,027,437.45	7,103,598.81	7,721,261.75
Cash Balance at End of Year *				10,351,630.20	8,273,686.28	10,027,437.45	7,103,598.81
Reserved for Unpaid Obligations				(204,024.04)	(488,296.71)	(314,226.24)	(411,361.27)
Unreserved Cash Balance at End of Year				\$ 10,147,606.16	\$ 7,785,389.57	\$ 9,713,211.21	\$ 6,692,237.54
* Includes invested amounts							

Operating Receipts vs. Operating Disbursements (Chart)



Receipts fluctuate due to the commission's 2-year licensing cycle.

QUESTIONNAIRES

Commission Member Questionnaire

Letters requesting participation in our survey were sent to all 9 commission members. Of the 9, 8 participated in the survey. The percentages are only of those who responded to the questions.

- 1. What are the most significant issues currently facing the Real Estate Commission and how is the Commission addressing these issues?**

Respondent 1 Protection of consumer escrow funds as well as the proper disclosure of information and the lack of license requirement for apartment managers which represent over 100,000 transactions annually and between \$780 million to \$1.1 billion consumer dollars per year; a lot of the money should be in Alabama banks.”

Respondent 2 I am a new commissioner, still learning the job and hearing matters for the first time. Two areas of discussions in the future will be apartment managers and community association managers, and should we include them in our regulations, and how.

Respondent 3 Due to the poor economy, Brokers are using their trust accounts to operate their business or pay their personal bills. (The Commission Auditors are doing a great job at determining who these Brokers are and the investigation is presented to the Commission.) Second item of concern is Home Owner Associations across the State of Alabama. Consumers are being taken advantage of by Developers and HOA managers. There is not a disclosure to Consumers concerning the financial stability of the HOA. Developers are financing the Common grounds and facilities and spend the money as they please, due to the non-disclosure and how the CC&Rs are written giving the Developer broad powers. (The Commission had a Task Force to study HOAs and a joint Governor's Task Force was set up to give recommendations to the Alabama Law Institute to write a law to address this issue. The Alabama Home Builders Association was able to delay this Task Force from meeting for 3 months, which after the election, a new Governor & Senators replaced Gov. Riley and Senator Butler who were pushing this issue. The Task Force has now been disbanded without ever meeting.)

Respondent 4 Economic condition of the nation and the impact to the licensees. (Commission continues to audit companies to ensure compliance of our regulations) Continuing to foster strong educational programs for our licensees (Educational department of the Commission continues educational audits of educational schools and instructors, encouraging the highest qualify teaching and educational materials.) Continuing to protect the consumer in Real Estate transactions (Commission daily takes calls from consumers and addresses all issues expedite).

Respondent 5 Misuse of trust accounts - Commission is giving harsh fines, revoking license & mandating continuing education for offenders. Property Management issues. We are working to get legislation passed that will clarify the licensing issues for property managers. Promoting a more positive image for real estate licensees as viewed by the public.

Respondent 6 I perceive the following as significant issues: (a) the need for regulation of

apartment managers. Legislation is being pursued to reinstate the Real Estate Commission's ability to license and regulate them. (b) The need for regulation of community association managers. A task force has been working on this and currently the Alabama Law Institute is studying the issue. (c) We are also seeing licensee escrow account violations. To address this, the Commission is developing a 3 hours continuing education course for brokers that will focus in large part to the proper handling of escrow funds.

Respondent 7 None.

Respondent 8 Homeowner assoc. property management & individuals selling without licenses. We have task forces working on this.

2. What changes to the Real Estate Commission's laws are needed?

Respondent 1 Immediate reinstatement of licenses for apartment managers. Long term regulations for association management.

Respondent 2 I have not heard of any needed changes.

Respondent 3 Need a law concerning item #2 above.

Respondent 4 Need to address law governing Licensure of Condo/Homeowner Associations.

Respondent 5 In order to have a more professional trade I feel more mandated continuing education courses are needed for licensees.

Respondent 6 There is the need to provide for licensing and / or regulation of apartment managers and community association managers.

Respondent 7 None

Respondent 8 I think our laws are adequate. We need to enforce on local & state levels.

3. Is the Real Estate Commission adequately funded?

Yes	7	87.5%
No	0	0.0%
Unknown	0	0.0%
No Opinion	1	12.5%

4. Does the Real Estate Commission receive regular reports on the operations of the commission from the chief administrative officer?

Yes	8	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%

5. Is the Real Estate Commission adequately staffed?

Yes	7	87.5%
No	0	0.0%
Unknown	0	0.0%
No Opinion	1	12.5%

6. Has the Real Estate Commission experienced any significant changes to its operations?

Yes	3	37.5%
No	5	62.5%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 1 We are embracing new technology making administration and communication easier for consumers and licensees in all phases of operations.

Respondent 5 Moving toward a totally paperless commission.

Respondent 6 The Commission continues to enhance communication to consumers and licensees through the application of current technology.

7. Does the Real Estate Commission plan any significant changes in its operations?

Yes	2	25.0%
No	4	50.0%
Unknown	2	25.0%
No Opinion	0	0.0%

Respondent 1 Reinstatement of apartment manager regulations and continue to expand our use of technology and education.

Respondent 2 I'm sorry to be unsure on the last few questions, but being the new commissioner I'm still learning.

Respondent 6 The Commission plans to continue the use of new technologies and to, hopefully, see the reinstatement of apartment manager licensing. A more long-term goal is to regulate community association managers.

Broker Licensee Questionnaire

Of 100 letters sent, 34 participated in the survey. Six letters were returned as “undeliverable”, and 61 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Do you think regulation of your profession by the Real Estate Commission is necessary to protect public welfare?

Yes	33	97.0%
No	1	3.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 16 Could not imagine how bad off we would be without such regulation.

Respondent 18 I think that if someone is a victim of misrepresentation or fraud they have the court system for mitigate any damage. I do feel that agents, like other licensed professionals, should be required to have continuing education.

Respondent 32 The most important element of our profession to be monitored would be escrows.

2. Do you think any of the Real Estate Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	8	23.5%
No	24	70.5%
Unknown	1	3.0%
No Opinion	1	3.0%

Respondent 3 I think the Brokers Services Disclosure is not necessary. If we present an Agency Disclosure, then the consumer has selected the level of service available. I also, think Estimate of Expenses is unnecessary, the closing agent or lender should provide this if needed. The consumer is confused when our estimate is not accurately given.

Respondent 5 The application of laws often "majors in the minors.

Respondent 18 I think the laws that are in place are good and necessary.

Respondent 20 RECAD confuses potential prospects etc.

Respondent 21 Steering is a problem and I respect the need to protect the public. However not being able to give any opinion on neighborhood limits an agent's ability to represent their client. Seems there should be a happy medium.

Respondent 27 I think it is a waste of time to publish the names of people who bounce checks to the commission. (I have never done this.)

Respondent 32 Over the years, way too much paperwork has become required. Real Estate is no fun anymore.

3. Do you think any of the Real Estate Commissions Requirements are irrelevant to the competent practice of your profession?

Yes	12	35.3%
No	20	58.8%
Unknown	2	5.9%
No Opinion	0	0.0%

Respondent 3 Noted in #2 above.

Respondent 5 Yes. For instance, the requirement for a sign. And the requirement to disclose the brokerage name. Violation of these do not harm the public. No one cares.

Respondent 11 CE that is primarily based on residential sales agents and brokers when I focus solely on retail leasing and development.

Respondent 18 Again, I think that regulation should be lifted and use the courts to mitigate damages. So, all the paper work audit etc. I think is a real hassle. Other industries, for example the auto industry, do not have a regulatory body. How about the furniture industry? I realize a home purchase is a huge purchase but it should be up to the purchaser and the company to keep what records it wants to keep not the government. If one does not keep good records they may suffer the consequences of not having evidence if needed. Professionals should not be treated like children.

Respondent 21 I think some of the policies in place are out of date.

Respondent 23 I do believe that there needs to be rules and regulations but I also believe that many of the rules are too restrictive.

4. Are you adequately informed by the Real Estate Commission of changes to and interpretations of Real Estate Commission positions, policies, rules, and laws?

Yes	29	85.4%
No	3	8.8%
Unknown	1	2.9%
No Opinion	1	2.9%

Respondent 5 They do an excellent job of advising the industry what is going on.

Respondent 11 Would prefer to receive email alerts and updates instead of snail mail.

5. Has the Real Estate Commission performed your licensing and renewal in a timely manner?

Yes	33	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%
No Response	1	

Respondent 5 However, as a broker, it is nothing but liberal taxation to apply a fee on both the individual and the sole proprietor broker (same person).

6. Do you consider mandatory continuing education necessary for competent practice?

Yes	32	94.2%
No	1	2.9%
Unknown	0	0.0%
No Opinion	1	2.9%

Respondent 3 Otherwise we would not be knowledgeable of new rules and regulations.

Respondent 5 However, the specific CE requirements are not always relevant to competent practice.

Respondent 11 But more options that are geared to the retail and commercial side instead of residential.

Respondent 20 Limited

Respondent 23 I do not believe most of the classes are worth the time spent on them. I believe after someone has been in the business for 10 or 15 years they should only have to take classes that discuss information that has changed.

Respondent 32 Most classes are done by rote. Not much is really gained through these classes. It is much better when an agent attends voluntarily to study subjects that interest them.

7. Has the Real Estate Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	29	85.3%
No	0	0.0%
Unknown	3	8.8%
No Opinion	2	5.9%

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Real Estate Commission doing to address the issue(s)?

Respondent 1 Market conditions are forcing many highly qualified brokers/agents to become inactive.

Respondent 2 The lack of education and ability to adequately mitigate risk facing agents selling in community associations.

Respondent 3 E & O Insurance should be mandatory.

Respondent 4 Foreclosures and short sales continue to surface as properties that are in demand by buyers. Adequate education has been provided by AREC to prepare us for this issue.

Respondent 5 Application of agency and disclosure law in a practical way, to meet the needs of the public.

Respondent 6 Unknown

Respondent 8 I believe the most pressing issue is a lack of a state wide sales and or listing contract that all companies use. I believe this would alleviate much confusion among agents and allow for better contract education for all.

Respondent 9 Right of Redemption Law

Respondent 10 I do not think the real estate commission can help the current issues (housing market, government regulations on loans).

Respondent 11 unknown

Respondent 12 Ethical issues with licensees, RE Commission conducting investigations on this issue

Respondent 13 Changing the Right of Redemption rules.

Respondent 14 Most significant problems are unqualified agents practicing in the industry. Lack of accountability from agents. Not a lot of oversight if agents don't respond appropriately (in a timely fashion) to other agents.

Respondent 16 Lack of adequate laws and regulations to govern Homeowners Associations. The Commission is actively involved in trying to get this changed.

Respondent 18 The availability of financing to purchasers. Not sure that the commission can do anything about that. They do not loan funds.

Respondent 20 financing and insurance

Respondent 23 The most significant issue I deal with is brokers stating that they are within the law and have no regard the ethics. You might be legally right but that does not mean it is ethically right. I do not believe the commission can do anything about it.

Respondent 25 Easier statewide access to county tax info and MLS in other cities

Respondent 26 No Opinion

Respondent 27 I would say public perception, our industry as a whole is still looked at poorly and allot of times it is because a few bad agents do things that they shouldn't. I think by strengthening the licensing process and continuing education process that we all could better protect the public by being more knowledgeable. I think this could be easily achieved with expecting higher standards of anyone that wants to be licensed. I am not sure what the commission is doing if anything to address this.

Respondent 28 property management

Respondent 31 Financial institution regulations

Respondent 32 In my region, cost of insurance is our biggest competitor. It has become so high; most people can't afford the additional escrow added to their payments. Most buyers put the phrase 'contingent on satisfactory insurance' in their Purchase Agreements.

Respondent 33 Transparency & disclosure very concerned about Home Owner's Association practices & no laws governing.

No Response 10

9. Do you think the Real Estate Commission and its staff are satisfactorily performing their duties?

Yes	32	94.2%
No	0	0.0%
Unknown	1	2.9%
No Opinion	1	2.9%

Respondent 5 Except that the Commission's priorities seem to emphasize the minor issues, instead of emphasizing the major issues.

Respondent 6 They have performed in respect to the needs that I have had.

Respondent 16 They do an outstanding job.

10. Has any member of the Real Estate Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	34	100.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 5 Absolutely not.

Salesperson / Timeshare Licensee

There were 100 letters sent to salespersons and 5 to timeshare licensees. Fifteen salespersons participated in the survey; and 1 timeshare Licensee participated. Not all who participated responded to each question. The percentages are only of those who responded to the questions.

- 1. Do you think regulation of your profession by the Real Estate Commission is necessary to protect public welfare?**

Yes	15	93.7%
No	0	0.0%
Unknown	0	0.0%
No Opinion	1	6.3%

- 2. Do you think any of the Real Estate Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?**

Yes	4	25.0%
No	9	56.2%
Unknown	1	6.3%
No Opinion	2	12.5%

- 3. Do you think any of the Real Estate Commissions Requirements are irrelevant to the competent practice of your profession?**

Yes	4	25.0%
No	11	68.7%
Unknown	0	0.0%
No Opinion	1	6.3%

- 4. Are you adequately informed by the Real Estate Commission of changes to and interpretations of Real Estate Commission positions, policies, rules, and laws?**

Yes	11	68.7%
No	2	12.5%
Unknown	2	12.5%
No Opinion	1	6.3%

- 5. Has the Real Estate Commission performed your licensing and renewal in a timely manner?**

Yes	15	93.7%
No	1	6.3%
Unknown	0	0.0%
No Opinion	0	0.0%

6. Do you consider mandatory continuing education necessary for competent practice?

Yes	11	73.3%
No	3	20.0%
Unknown	1	6.7%
No Opinion	0	0.0%
No Response	1	

Respondent 12 Perhaps more required training on new topics but less total hours required.

7. Has the Real Estate Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	15	93.7%
No	0	0.0%
Unknown	1	6.3%
No Opinion	0	0.0%

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Real Estate Commission doing to address the issue(s)?

Respondent 3 [REDACTED] claims, and I feel abandoned by all parties involved. Just because they "claim" that they have set aside money for us, nobody is getting paid. It makes me sick.

Respondent 4 Real Estate Commission could possibly work more closely with the mortgage industry in helping the Realtor secure mortgage financing for the consumer.

Respondent 5 The extremely poor housing market is the key issue and I don't see that there's anything the RE Commission can do to address it.

Respondent 6 Whether the commission in a real estate transaction is justifiable in all situations.

Respondent 8 none

Respondent 12 Distressed properties and the impact on the market. Yes

No Response 10

9. Do you think the Real Estate Commission and its staff are satisfactorily performing their duties?

Yes	15	93.7%
No	0	0.0%
Unknown	1	6.3%
No Opinion	0	0.0%

10. Has any member of the Real Estate Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	16	100.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Company Licensee

There were 100 letters sent to real estate companies. Thirty four responded to our survey, 5 letters were returned as “undeliverable”, and 61 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the questions.

1. Do you think regulation of your profession by the Real Estate Commission is necessary to protect public welfare?

Yes	32	94.1%
No	0	0.0%
Unknown	0	0.0%
No Opinion	2	5.9%

Respondent 2 You asked, so I will give you my opinion. I have strong opinions when it comes to public trust and the agencies charged with the responsibility thereof. The regulation enforcement seems to me to be selective. The only people you read about being fined, etc. are the little guys like myself who are operating a small business. I don't recall ever seeing anything in print from the Commission adversely about any of the big operators. Most, and I do mean most, of the Brokers from the big companies that I have had dealings with are totally inadequate. Their knowledge of the profession is sorely lacking. Their positions are mostly due to political connections rather than proficiency as Real Estate professionals. Such is the industry in Alabama. I am coming from 40 years of experience, observation, and knowledge. I ran one of the top three companies in Birmingham at one time. I "retired" 20 years ago and became a one man operation; just doing what I want to do and do well.

Respondent 24 We practice commercial only, and most of focus is to protect public re: residential / mortgage issues

Respondent 34 With modification

2. Do you think any of the Real Estate Commission's laws, rules, and policies are an unnecessary restriction on the practice of your profession?

Yes	7	21.2%
No	23	69.7%
Unknown	0	0.0%
No Opinion	3	9.1%
No Response	1	

Respondent 2 See below. To properly answer this question would take a page by page review. The original rules and regulations were fine. They appear to keep getting interpreted just to give someone something to do.

Respondent 24 We practice commercial only, and most of focus is to protect public re: residential / mortgage issues

Respondent 33 It would be more professional to have a National License, with say 4 hours of

state related CE every 2 years update material. The N.L.could also have CE

3. Do you think any of the Real Estate Commissions Requirements are irrelevant to the competent practice of your profession?

Yes	8	24.2%
No	21	63.6%
Unknown	0	0.0%
No Opinion	4	12.1%
No Response	1	

Respondent 2 Example; the rules now state that one cannot use "nicknames" unless they are a formal part of one's license. I have used "Bob" for 40 years and now when I try to add this to my license I cannot accomplish the task on the Internet so I have just given up trying. Who cares that I use Bob on my signs? Every man named Robert is called Bob. This is a very foolish and ridiculous exercise of authority.

Respondent 8 We broker land. I think it unnecessary to have to include a Buyers cost estimate if there happens to be a house on the property

Respondent 24 We practice commercial only, and most of focus is to protect public re: residential / mortgage issues

4. Are you adequately informed by the Real Estate Commission of changes to and interpretations of Real Estate Commission positions, policies, rules, and laws?

Yes	30	88.2%
No	2	5.9%
Unknown	1	2.9%
No Opinion	1	2.9%

Respondent 2 An occasional mailing is not sufficient. I suggest a bi-weekly e-mail.

Respondent 33 Provided that everyone is advised by email and newsletters in a timely manner.

5. Has the Real Estate Commission performed your licensing and renewal in a timely manner?

Yes	32	100.0%
No	0	0.0%
Unknown	0	0.0%
No Opinion	0	0.0%
No Response	2	

Respondent 2 Very good.

6. Do you consider mandatory continuing education necessary for competent practice?

Yes	27	79.4%
No	4	11.8%
Unknown	1	2.9%
No Opinion	2	5.9%

Respondent 2 I appreciate the fact that I am Grandfathered in and do not have to go to many mandatory schools. However, I continue to keep up with what is going on and any new changes when I am aware of them. As a young man in the business I attended many classes and learned from each of them.

Respondent 8 Unless there is a change in the regulations or law. We do the same classes each renewal time

Respondent 11 I would suggest a Licensee that has been in active business for over 25 years should not be required mandatory continuing education

Respondent 12 I would suggest a Licensee that has been in active business for over 25 years should not be required mandatory continuing education

Respondent 33 See my comments regarding a National License. Agency Laws need to be uniform throughout the country for better understanding by the public

Respondent 34 With modification.

7. Has the Real Estate Commission approved sufficient providers of continuing education to ensure your reasonable access to necessary continuing education hours?

Yes	29	85.3%
No	1	2.9%
Unknown	1	2.9%
No Opinion	3	8.8%

Respondent 1 Outstanding providers and they do an outstanding job.

Respondent 2 My opinion is yes, however, not being in the direct loop from Montgomery I do not know how many are available.

Respondent 7 Most course material is for the residential practitioner. Only until recently has that changed in the Birmingham area, because we developed our own commercial division() which has provided some very good commercial courses, lectures, etc. which have been good learning experiences.

Respondent 33 Correspondent courses in written manual and by computer are the best as long as material can be kept for review.

8. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Real Estate Commission doing to address the issue(s)?

Respondent 1 Ethical challenges within our Profession, Also the constant changes in the mortgage industry, almost daily, the commission is providing valuable information through their news bulletins and emails, and also providing insight from the foremost authorities in the real estate community.

Respondent 2 Every third person that you meet these days has a Real Estate License. The Real Estate Commission is issuing more licenses? There are too many Brokers with insufficient experience to properly operate a Real Estate Office. About every third licensee is a Broker. There are way too many people in the profession.

Respondent 3 the banks wanting to get into our profession, and I e the lobbyist is taking care of these issues

Respondent 4 Ethical Standards- Education and enforcement

Respondent 5 the economic downturn. Educating us on how to improve our client base.

Respondent 7 Education. Not much that I am aware of.

Respondent 8 The Commission can't change the economy

Respondent 10 N/A

Respondent 11 No Opinion

Respondent 12 No Opinion

Respondent 13 I have never sold anything in Alabama.

Respondent 14 Property values are dropping due to the foreclosures. There is nothing out in the marketing area to keep property values up. The right of redemption needs to be addressed.

Respondent 15 I have mutual reciprocity w/ Alabama and do not have any activities right now.

Respondent 16 I am a licensed broker in Alabama, but I have not done any business in this state yet.

Respondent 17 n/a

Respondent 21 I have no issues at this time.

Respondent 22 Coastal property insurance

Respondent 23 The worst recovery of the housing market that we have faced in our lifetime.

REC can only help to encourage consumer which is a difficult issue.

Respondent 24 We practice commercial only. I would like to see addition of new class of license for commercial only (harder to get, but easier to maintain)

Respondent 25 Economy

Respondent 26 Need standardized forms for Alabama. Not sure if Real Estate Commission is addressing this issue thoroughly.

Respondent 29 Poor economy

Respondent 30 Tax implications

Respondent 31 General economy. Nothing.

Respondent 32 no opinion

Respondent 33 Vast changes in financial laws and regulations and Fed. Gov't's strict control of lending practices that harm the public ability to retain their housing needs

Respondent 34 Incompetent and poorly trained agents Nothing

No Response 7

9. Do you think the Real Estate Commission and its staff are satisfactorily performing their duties?

Yes	29	85.3%
No	0	0.0%
Unknown	2	5.9%
No Opinion	3	8.8%

Respondent 1 Excellent Job.

Respondent 2 The Commission has become an ever growing bureaucracy. Like all Government agencies it has grown way too big to be of any real use to the average Agent/Broker. Instead of providing a service to those it was originally formed to serve, it has become an Agency of directives rather than of service.

Respondent 24 Little interaction, but I believe they are doing well

Respondent 34 Have very little reason to have contact with them

10. Has any member of the Real Estate Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	34	100.0%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 2 In my 40 years in the profession I have never been solicited, nor have I offered any monies to any member of the Commission or staff. There has never been any question as to the ethics of the Commission. My only complaint is that the Commission seems to want to license everyone in Alabama. I believe that our Alabama Commissioners and Staff are head and shoulders above any other agency in the country as to ethics.

Real Estate School Questionnaire

There were 100 letters sent to real estate schools. Twenty seven responded to our survey, 5 letters were returned as “undeliverable”, and 68 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the questions.

1. Do you think regulation of your profession by the Real Estate Commission is necessary to protect public welfare?

Yes	23	85.2%
No	4	14.8%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 5 Some schools do not maintain a high enough teaching standard in my opinion.

Respondent 6 Without their regulations the consumer would have no legal rights when buying & selling real estate.

Respondent 7 I believe professional associations serve a valid alternative to state licensing.

Respondent 10 If there were no regulation I can't imagine what would happen.

Respondent 21 The brokerage services provided by licensees of the AREC to consumers as individuals and the public in general is critical to maintain an orderly transferring of ownership of private property in an allodia system. Without oversight and regulation, human greed, deception and incompetence would cause the system to collapse.

2. Do you think any of the Real Estate Commission's laws, rules, and policies are an unnecessary restriction on the teaching of your profession?

Yes	5	18.5%
No	20	74.1%
Unknown	1	3.7%
No Opinion	1	3.7%

Respondent 4 The requirement for students to be provided a risk management book is unnecessary and costly. For this reason, I don't teach this subject to large groups.

Respondent 6 If anything they should be more restrictive.

Respondent 12 Instructors do not receive credit for teaching continuing education. Instructors learn MUCH MORE in preparation for these classes than the actual student does who takes the course.

Respondent 14 I feel that classroom and distance education should not require separate licensing.

Respondent 21 Actually, while much progress has been achieved in the last decade, much more still remains to be done to cause the real estate licensee education and reeducation process to become more efficient and standardized with the desired result being increased knowledge and skills and ethical awareness among all licensees.

3. Do you think any of the Real Estate Commissions Requirements are irrelevant to the competent teaching of your profession?

Yes	5	18.5%
No	20	74.1%
Unknown	0	0.0%
No Opinion	2	7.4%

Respondent 4 The 12 hour instructor CE requirement is an issue with me mostly because of the limited number of classes and the distance I must travel to take them.

Respondent 5 We must have guidelines in order to establish our proper course and teach to an established standard.

Respondent 6 The more requirements, the better the quality of education.

Respondent 14 I feel that classroom and distance education should not require separate licensing

Respondent 21 As stated, while the Alabama Code Title 34, Chapter 27 statutory laws may need updating to comply with advances in technology - as may some of the administrative rules, all in all the relevance is appropriate.

4. Are you adequately informed by the Real Estate Commission of changes to and interpretations of Real Estate Commission positions, policies, rules, and laws?

Yes	26	96.3%
No	1	3.7%
Unknown	0	0.0%
No Opinion	0	0.0%

Respondent 4 The commission does a great job in keeping us informed of important changes

Respondent 5 They do an extraordinary job in this regard!

Respondent 21 As it happens I have been invited on occasion to testify before the Commissioners with regard to proposed changes in the rules of the AREC regarding education. The monthly newsletter "The Educator" is available to all instructors on line and the AREC Education Division staff members are always available to answer questions

5. Has the Real Estate Commission performed your licensing and renewal in a timely manner?

Yes	26	96.3%
No	0	0.0%
Unknown	1	3.7%
No Opinion	0	0.0%

Respondent 21 No problem here at all.

6. What do you think is the most significant issue(s) currently facing your profession in Alabama and what is the Real Estate Commission doing to address the issue(s)?

Respondent 2 My most significant issue is the economy or lack thereof. However, the AREC cannot help with this.

Respondent 4 The mortgage industry is a disaster. I don't know what the commission's role is in this.

Respondent 5 A lack of students due to decreased profitability in our profession. I don't feel they have the means to change that at this time.

Respondent 6 Improving the quality of continuing education by placing more requirements on instructors; especially with out-of-state providers. I believe they are working to correct the issue. Another issue is getting laws changed through the legislature due to filibusters.

Respondent 10 Lack of available mortgages, foreclosures and short sales. Real Estate Commission doesn't have any control over the economy.

Respondent 12 Pre-license course/test is not adequate for learning the profession of selling real estate. That is the reason our profession is so widely disrespected.

Respondent 17 just making sure that Instructors teach the material that has been approved for CE - by auditing the classes and responding to the Instructors

Respondent 21 As mentioned, much progress has been accomplished...but because the AREC relies so much on Qualifying Brokers to carry out the "Mission" of the AREC, and because ANYONE who has a broker's license, no matter what their experience or training can become a Qualifying Broker by merely filing an application, even more current training and refreshment on matters of law and regulations needs to be required of all brokers on a continuous basis in order to assure that Qualifying Brokers are truly "qualified" to assist the Commission in fulfilling their mission.

Respondent 22 Don't know.

Respondent 24 Slow economy

Respondent 25 industry evolution to virtual/electronic based as opposed to brick and mortar; some existing regulations are preventing local competition with out-of-state companies entering our market without the same requirements/expectations/regulations

Respondent 27 We have not been able to teach our RLS classes for about a year due to lack of enrollment. This is probably due to the downturn in the RE market.

No Response 15

7. Do you think the Real Estate Commission and its staff are satisfactorily performing their duties?

Yes	25	92.6%
No	0	0.0%
Unknown	2	7.4%
No Opinion	0	0.0%

Respondent 2 I have to say the staff has been above and beyond, what assistance I have needed.

Respondent 5 All of the ones I have dealt with are very professional and seem genuinely interested in helping with problems and/or concerns.

Respondent 6 I deal with Real Estate Commission's in numerous other states and our Commission is the most professional and helpful of any.

Respondent 7 I believe they do an excellent job with their appointed task. They have always been responsive to our requests.

Respondent 10 Absolutely. They are very responsive to any questions I might have and respond in a timely manner.

Respondent 21 I have worked with the staffs of several state real estate regulatory departments and I must compliment the Alabama AREC staff in every department on their willing and helpful approach to carrying out their duties and providing assistance to those who call on them for help.

8. Has any member of the Real Estate Commission or its staff asked for money (other than normal fees), services, or any other thing of value in return for performing a commission service for you?

Yes	0	0.0%
No	26	96.3%
Unknown	1	3.7%
No Opinion	0	0.0%

Respondent 2 And if they had, I would have been the first to contact you.

Respondent 21 In my experience no member of the AREC, at any level, in any division, has ever asked for or received any compensation or personal benefit from me or anyone I know.

Complainant Questionnaire

There were 100 letters sent to complainants. Twenty three responded to our survey, 18 letters were returned as “undeliverable”, and 59 did not participate. Not all who participated responded to each question. The percentages are only of those who responded to the question.

1. Was your complaint filed with the Real Estate Commission by:

Mail	17	73.9%
Phone	2	8.7%
Fax	3	13.0%
Other	1	4.3%
Unknown	0	0.0%

2. Was receipt of your complaint promptly acknowledged?

Yes	20	87.0%
No	2	8.7%
Unknown	1	4.3%

3. If the answer to question 2 was yes, how long after you filed your complaint were you contacted by the Real Estate Commission?

Immediately	5	23.8%
Within 10 days	10	47.6%
Within 20 days	5	23.8%
Within 30 days	0	0.0%
More than 30 days	0	0.0%
Did not respond	1	4.8%
Unknown	0	0.0%

4. Was the employee who responded to your complaint knowledgeable and courteous?

Knowledgeable	1	4.3%
Courteous	3	13.0%
Both	13	56.5%
Neither	6	26.1%
Unknown	0	0.0%

Respondent 23 Courteous NO! We explained at the beginning that [REDACTED] had had a stroke & that his memory is not very good. [REDACTED] would have to explain some things. Every time I ([REDACTED]) would try to add some important details, the employee would say “you be quiet, I am speaking to [REDACTED].” (in a rude tone at that!) The employee spent too much time telling how many awards he had received; how much money & land he had inherited via his father-in-law.

5. Did the Real Estate Commission communicate the results of investigating your complaint to you?

Yes	16	69.6%
No	3	13.0%
Unknown	4	17.4%

6. Do you think the Real Estate Commission did everything it could to resolve your complaint?

Yes	12	52.2%
No	10	43.5%
Unknown	1	4.3%

Respondent 2 In fact, just the opposite. I honestly thought I would get a result but actually got nothing. Realtors get away with everything.

Respondent 3 Our Escrow deposit was handed over to the buyer within hours of receipt by the Realtor. We were told that our Escrow money would be placed into an Escrow Account until our closing. When the buyer could not close due to a problem with getting clear title to his property, we asked for our deposit to be returned.....and on that date we were told that the money "had been given to the Seller". No agreement ever signed with both parties regarding disbursement of the Escrow funds. Realtor as much as laughed in our face and said "Sorry!"

Respondent 8 Although the AREC initially acknowledge my complaint correctly regarding the correct individual, the AREC ultimately got confused about who my complaint was actually about and ended up denying my complaint because it did not support findings against this other agent. We notified the investigator that they had gotten the agents mixed up, and clarified that my complaint was against the first individual. However, I don't know if they ever got it straightened out, and I never heard a final resolution for my complaint against the actual agent complained of.

Respondent 11 Unfortunately, the most the AREC could do was pursue a misdemeanor offense.

Respondent 12 AFTER CONTACTING THE RE COMM. I RECEIVED A RESPONSE FROM RE. OFFICE THAT I COMPLAINED ABOUT AND THEY RETURNED MY DEPOSIT. THANK YOU

Respondent 14 No the real estate commission did not recover the down payment that was stolen from me by [REDACTED] [REDACTED] of [REDACTED] Realty and Investments and [REDACTED]
[REDACTED]

Respondent 15 They failed to contact me personally during the investigation. After receiving a letter about the closing of the complaint, I called [REDACTED]. [REDACTED] [REDACTED] and asked him questions concerning his contact with the real estate broker and his investigation. After the conversation, I felt that his investigation was at-best poorly handled. I have notes of the conversation and after reviewing them it appears that the purpose was to protect the broker and agents rather than the public. Having been a broker for a number of years, as well as a certified Real Estate Instructor, teaching pre-licensing, post-licensing, and continuing education, including Alabama real estate law, I feel qualified to make the assertion that the complaint was not addressed.

Respondent 16 The state of Alabama's housing laws for real estate and building are for protection of the realtors and contractors. The laws are very out dated and do not protect the consumer or home owners. The laws and processes need to be of 2010 and not civil war. As a lawyer told me, the laws have not changed since the civil war. Instead, it seems Alabama prides themselves on being a 'buyer beware state'.

Respondent 22 I disagreed with the decision because of what I perceived was careless fiduciary responsibility exercised by the other party. Strict interpretation of the rules seemed to rule otherwise,

Respondent 23 The REC should have demanded a face to face response from [REDACTED]. [REDACTED] (not just a call or letter). [REDACTED]. [REDACTED] probably did a "snow" job on them like he does everyone!

7. Were you satisfied with your dealings with the Real Estate Commission?

Yes	11	47.8%
No	12	52.2%
Unknown	0	0.0%

Respondent 1 Not satisfied with the outcome, this was an admitted act of fraud and although the sales were not completed involving the fraud, she knowingly and willfully was directing consumers to commit fraud. It should have resulted in loss of license!

Respondent 2 I have consulted with an attorney not only to take legal action against the sellers but also the realtors who were for the buyers. My realtor has really tried to help, but even she has gotten nowhere. I truly feel that I was ripped off and NO ONE will listen or help.

Respondent 3 We felt there was not enough investigation into this complaint, and that the Realtor knew he would only get a slap on his wrist....and that he got away with it. He also knew we were older, retired people who probably could not afford to sue for the \$4,000. deposit. I think the Realtor was "doing a favor" for his friends by getting someone to buy this "owner financed" property, and he would make some cash on the side.

Respondent 4 The people that I spoke to at the Real Estate Commission were pleasant and courteous to me.

Respondent 8 My complaint very clearly stated the individual about whom I was filing my complaint, and the AREC correctly acknowledged that agent in their initial response. However, they got it confused later and denied my complaint in reference to an entirely different agent.

Respondent 9 They took the license of the agent, but did not help me in recovering any of the money the agent stole from me.

Respondent 11 I am disappointed that the most the AREC could do was a misdemeanor, but it is being investigated by Federal authorities.

Respondent 14 They stole my down payment money. It was never recovered or returned to me. I am very dissatisfied that justice has not been served.

Respondent 15 During my time as a member of the Board of Directors of the B'ham Area and the Alabama Realtors Association, I felt the Real Estate Commission failed in its mission of regulating its licensees. It often seemed that the intent was to protect the brokers and agents. With the response received from [REDACTED] and [REDACTED], [REDACTED]'s telephone conversation, I feel even more strongly that the public is not being served. If you would like to discuss this further, I would be glad to meet with you and show you my file.

Respondent 16 All I received was a letter, and there was not further investigation of the closing, realtor and builder (a couple owned business)

Respondent 18 We were satisfied with the handling, and swift action of our case. They were supportive of our actions and gave advice freely. I believe the problem my husband and I have is more the laws that the Real Estate Commission have to abide by. When the person helping you with your case thinks you have been wronged but their hands are tied says something about the laws Alabama has for home buyers. I wish the laws would protect the buyer more NOT the seller especially when the seller is also a realtor. The housing market is already down why push potential buyers away when they know that they will not be fully protected?

Respondent 19 We did not get the final outcome as the Realtor chose to go to court rather than do as the Commission ordered him to do.

Respondent 23 We would really like to know what [REDACTED]'s response was & if it was really the truth! Did he have all the documentation needed to prove he was right? Probably not! We presented an in-depth survey that dated back to 1832! According to our survey, he has encroached on the [REDACTED] property, removing fences, & selling the property.

APPENDICES

Statewide Housing Sales Statistics Jan/2007 – Jan 2011

Number of Homes Sold in Alabama

Month	2007	2007-08 Variance	% Variance	2008	2008-09 Variance	% Variance	2009	2009-10 Variance	% Variance	2010
January	3,499	(607)	-20.99%	2,892	(908)	-45.77%	1,984	88	4.25%	2,072
February	4,001	(629)	-18.65%	3,372	(968)	-40.27%	2,404	(28)	-1.18%	2,376
March	5,248	(1,367)	-35.22%	3,881	(786)	-25.40%	3,095	445	12.57%	3,540
April	5,024	(1,162)	-30.09%	3,862	(831)	-27.42%	3,031	803	20.94%	3,834
May	5,776	(1,344)	-30.32%	4,432	(1,114)	-33.57%	3,318	764	18.72%	4,082
June	5,756	(1,585)	-38.00%	4,171	(411)	-10.93%	3,760	285	7.05%	4,045
July	5,480	(1,246)	-29.43%	4,234	(353)	-9.10%	3,881	(996)	-34.52%	2,885
August	5,462	(1,577)	-40.59%	3,885	(501)	-14.80%	3,384	(384)	-12.80%	3,000
September	4,109	(470)	-12.92%	3,639	(256)	-7.57%	3,383	(595)	-21.34%	2,788
October	4,051	(993)	-32.47%	3,058	396	11.46%	3,454	(987)	-40.01%	2,467
November	3,697	(1,527)	-70.37%	2,170	1,162	34.87%	3,332	(861)	-34.84%	2,471
December	3,595	(956)	-36.23%	2,639	253	8.75%	2,892	(218)	-8.15%	2,674
ANNUAL	57,705	(13,462)	-30.43%	44,243	(6,325)	-16.68%	37,918	326	0.85%	38,244

Information obtained from Alabama Center for Real Estate at www.acre.cba.ua.edu/

STATEWIDE

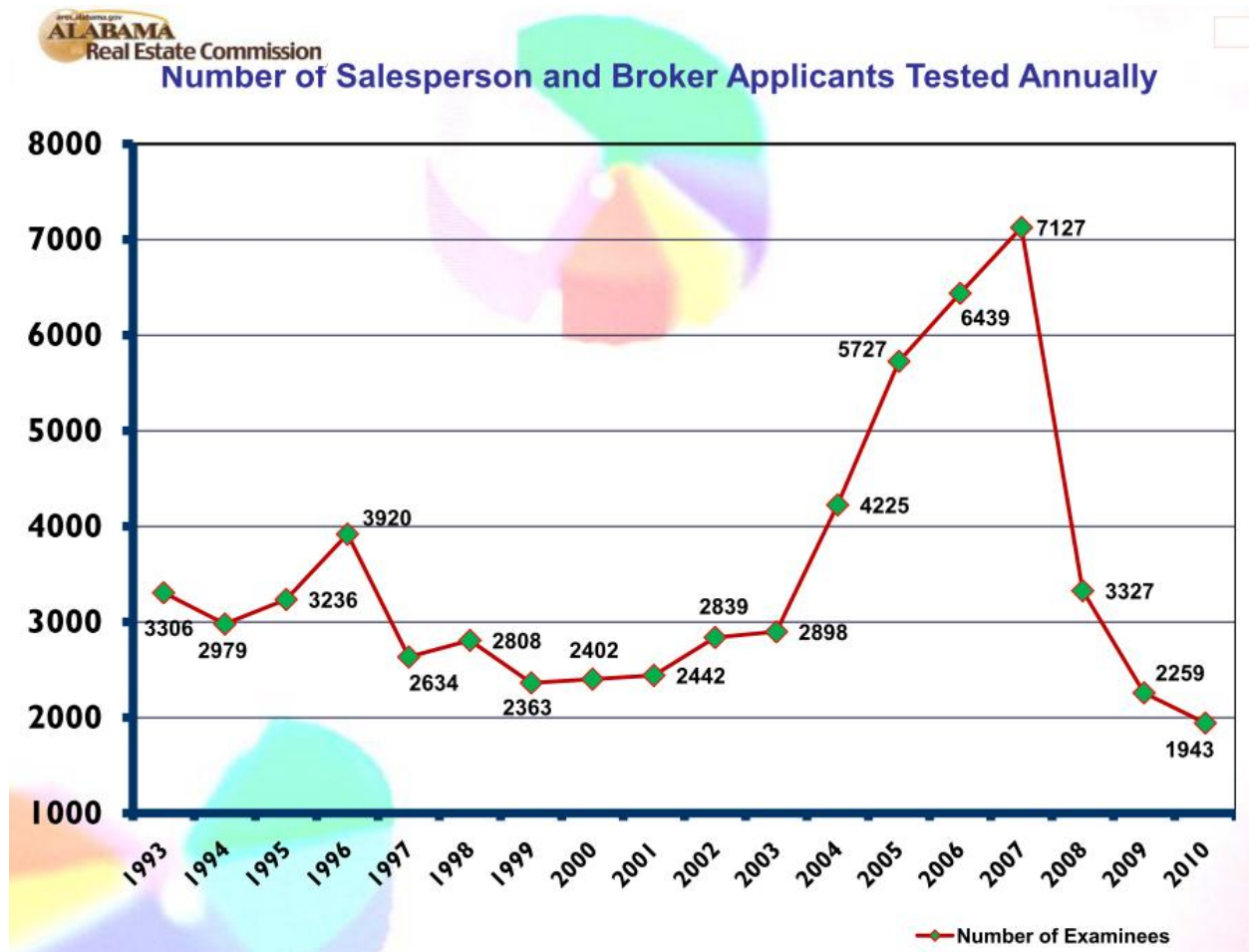
Date	No. Sales	Average Selling Price	Median Selling Price	Ave Days on Market	Total For Sale	Inv./Sales Ratio
2011 - January	2,052	133,439	116,607	162	36,649	17.9
2010 - December	2,674	149,042	118,695	166	36,903	13.8
November	2,471	150,786	129,997	166	38,890	15.7
October	2,467	144,193	127,401	145	39,920	16.2
September	2,788	148,668	120,233	145	40,644	14.6
August	3,000	145,579	122,482	139	41,646	13.9
July	2,885	150,678	128,909	153	42,174	14.6
June	4,045	153,833	131,242	143	42,675	10.6
May	4,082	148,049	127,454	144	41,935	10.3
April	3,834	139,347	118,074	141	41,007	10.7
March	3,540	146,811	123,064	155	40,642	11.5
February	2,376	130,696	112,894	140	39,260	16.5
January	2,072	138,991	118,762	153	38,178	18.4
2009 - December	2,892	144,475	124,447	146	36,329	12.6
November	3,332	134,089	114,658	156	37,946	11.4
October	3,454	145,053	119,420	144	38,891	11.3
September	3,383	146,391	127,565	159	38,925	11.5
August	3,384	151,314	127,546	150	39,293	11.6
July	3,881	158,801	137,990	151	39,627	10.2
June	3,760	157,459	129,710	157	39,728	10.6
May	3,318	147,472	126,346	152	39,634	11.9
April	3,031	142,880	125,651	143	39,224	12.9
March	3,095	138,945	120,820	153	38,976	12.6
February	2,404	133,523	118,843	142	38,550	16.0
January	1,984	132,525	113,095	151	38,275	19.3
2008 - December	2,639	138,483	117,681	130	37,690	14.3
November	2,170	144,503	117,310	124	39,961	18.4
October	3,058	146,740	123,601	141	41,082	13.4
September	3,639	156,059	126,533	131	41,457	11.4
August	3,885	168,394	126,491	129	42,004	10.8
July	4,234	172,730	141,395	142	43,057	10.2
June	4,171	158,936	131,401	130	43,536	10.4
May	4,432	165,298	131,542	136	43,113	9.7
April	3,862	152,124	127,053	134	42,675	11.0
March	3,881	155,764	127,862	136	41,398	10.7
February	3,372	155,000	125,075	125	41,005	12.2
January	2,892	145,235	127,328	139	39,228	13.6
2007 - December	3,595	149,437	125,802	129	39,706	11.0
November	3,697	155,969	133,119	119	41,094	11.1
October	4,051	151,398	126,056	123	41,991	10.4
September	4,109	167,692	133,742	124	42,329	10.3
August	5,462	163,432	130,110	114	42,149	7.7
July	5,480	163,829	134,929	113	43,010	7.8
June	5,756	168,973	139,175	120	41,258	7.2
May	5,776	159,237	129,957	119	41,125	7.1
April	5,024	148,942	122,182	126	38,991	7.8
March	5,248	157,903	131,369	125	37,766	7.2
February	4,001	154,524	129,317	126	36,153	9.0
January	3,499	150,906	125,785	119	35,090	10.0

Numbers in red indicate the highest annual value recorded

Numbers in green indicate the shortest average days on the market

Information obtained from Alabama Center for Real Estate at www.acre.cba.ua.edu/

Salespersons and Broker Applicants Tested Annually – 1993 - 2010



Information obtained from Real Estate Commission Assistant Executive Director

Performance Reports

2010 FISCAL YEAR QUARTERLY REPORT

Agency: 333 - Real Estate Commission						Program: 653 - PRO AND OCCU LICENSING AND REG					
Organization: -						Activity: -					
Key Goal:											
Goal 1	To protect the public by auditing 550 real estate companies per year by 2015.									Governor's Priority:	4
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Auditors will complete 550 audits.	# of audits	135	130	135	169	140	180	140	150	550	629
(O2-Efficiency) At least 90% of complaints will be investigated and probable cause determined within 90 days of receipt of complaint for complaints completed within that quarter.	% of complaints investigated within 90 days	0.9	100%	0.9	0.95	0.9	0.90	0.9	1.00	0.9	.96

Agency: 333 - Real Estate Commission						Program: 653 - PRO AND OCCU LICENSING AND REG					
Organization: -						Activity: -					
Key Goal:											
Goal 2	To protect the public by auditing 125 schools per year offering non-college credit courses and instructors actively teaching by 2015.									Governor's Priority:	4
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Auditors will have completed 125 education audits.	# of audits	15	16	26	26	35	32	39	39	115	113

Agency: 333 - Real Estate Commission						Program: 653 - PRO AND OCCU LICENSING AND REG					
Organization: -						Activity: -					
Key Goal:											
Goal 3	To enhance communication with stakeholders (licensees, education providers, and consumers) by making at least 60 points of contact on average with targeted groups per year by 2015.									Governor's Priority:	4
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual	Target	Actual	Target	Actual	Target	Actual
(O1-Quality) Make at least 60 points of contact on average with targeted groups per year.	# of points of contact	13	12	15	11	15	19	17	17	60	59

How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2009-10 affected your agency in meeting its desired accomplishments and services?											
No longer permitting state agencies to contract for professional services through colleges and universities caused considerable delay and being able to contract for supplemental support to staff efforts.											
What administrative improvements did your agency make in fiscal year 2009-10 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.											
Contracting for supplemental web development to enhance customer service, interactive communications to licensees and consumers.											

2011 FISCAL YEAR QUARTERLY REPORT

Agency: 333 - Real Estate Commission				Program: 653 - PRO AND OCCU LICENSING AND REG							
Organization: -				Activity: -							
Key Goal:											
Goal 1	To protect the public by auditing 575 real estate companies per year by 2015.								Governor's Priority:	4	
Objectives and Quarterly Targets:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives	Unit of Measure	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Auditors will complete 575 audits.	# of audits	130	172	147		158		140		575	
(O2-Efficiency) At least 90% of complaints concluded in the prior quarter will be investigated and probable cause determined within 90 days of receipt of complaint.	% of complaints investigated within 90 days	.90	100%	.90		.90		.90		.90	
* Actual performance data is not currently available for this quarter.											

Agency: 333 - Real Estate Commission				Program: 653 - PRO AND OCCU LICENSING AND REG								
Organization: -				Activity: -								
Key Goal:												
Goal 2	To protect the public by auditing 130 schools per year offering non-college credit courses and instructors actively teaching by 2015.								Governor's Priority:		4	
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Quality) Auditors will have completed 85 education audits.		# of audits	10	10	20		25		30		85	
* Actual performance data is not currently available for this quarter.												

Agency: 333 - Real Estate Commission				Program: 653 - PRO AND OCCU LICENSING AND REG								
Organization: -				Activity: -								
Key Goal:												
Goal 3	To enhance communication with stakeholders (licensees, education providers, and consumers) by making at least 50 points of contact on average with targeted groups per year by 2015.								Governor's Priority:	4		
Objectives and Quarterly Targets:												
Performance Measures			First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Objectives		Unit of Measure	Target	Actual	Target	Actual*	Target	Actual*	Target	Actual*	Target	Actual*
(O1-Efficiency) Make at least 45 points of contact on average with targeted groups per year.		# of points of contact	12	13	11		10		12		45	
* Actual performance data is not currently available for this quarter.												

ARTICLE 1. . GENERAL PROVISIONS.

§ 34-27-1. Short title.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

This chapter may be cited as the Alabama Real Estate License Law of 1951.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1.)

§ 34-27-2. Definitions; exemptions from chapter.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) For purposes of Articles 1 and 2 of this chapter, the following terms shall have the respective meanings ascribed by this section:

- (1) Associate broker. Any broker other than a qualifying broker.
- (2) Broker. Any person licensed as a real estate broker under Articles 1 and 2 of this chapter.
- (3) Commission. The Alabama Real Estate Commission, except where the context requires that it means the fee paid to a broker or salesperson.
- (4) Commissioner. A member of the commission.
- (5) Company. Any sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may provide for from time to time, which is licensed as a company under Articles 1 and 2 of this chapter.
- (6) Engage. Contractual relationships between a qualifying broker and an associate broker or salesperson licensed under him or her whether the relationship is employer-employee, independent contractor, or otherwise.
- (7) Inactive license. A license which is being held by the commission office by law, order of the commission, at the request of the licensee, or which is renewable but is not currently valid because of failure to renew.
- (8) Licensee. Any broker, salesperson, or company.
- (9) License period. That period of time beginning on October 1 of a year designated by the commission to be the first year of a license period and ending on midnight September 30 of the year designated by the commission as the final year of that license period.
- (10) Person. A natural person.
- (11) Place of business.
 - a. A licensed broker living in a rural area of this state who operates from his or her home, provided that he or she sets up and maintains an office for the conduct of the real estate business, which shall not be used for living purposes or occupancy other than the conduct of the real estate business. The office shall be used by the broker only and not as a place of business from which any additional licensee operates under his or her license. The office shall have a separate business telephone, separate entrance, and be properly identified as a real estate office.
 - b. All licensees located within the city limits or police jurisdiction of a municipality shall operate from a separate office located in the city limits or police jurisdiction. The office shall have a business telephone, meet all other regulations of the Real Estate Commission, and be properly identified as a real estate office. Hardship cases may be

subject to waiver of this regulation upon application and approval by the commission.

c. All business records and files shall be kept at the place of business as required by law or Real Estate Commission rules.

(12) Qualifying broker. A broker under whom a sole proprietorship, corporation, partnership, branch office, or lawfully constituted business organization as the Legislature may from time to time provide is licensed, or a broker licensed as a company to do business as a sole proprietorship who is responsible for supervising the acts of the company or proprietorship and all real estate licensees licensed therewith.

(13) Recovery fund. The Alabama Real Estate Recovery Fund.

(14) Salesperson. Any person licensed as a real estate salesperson under Articles 1 and 2 of this chapter.

(b) The licensing requirements of Articles 1 and 2 of this chapter shall not apply to any of the following persons and transactions:

(1) Any owner in the managing of, or in consummating a real estate transaction involving, his or her own real estate or the real estate of his or her spouse or child or parent.

(2) An attorney-at-law performing his or her duties as an attorney-at-law.

(3) Persons acting without compensation and in good faith under a duly executed power of attorney authorizing the consummation of a real estate transaction.

(4) Persons or a state or federally chartered financial institution acting as a receiver, trustee, administrator, executor, or guardian; or acting under a court order or under authority of a trust instrument or will.

(5) Public officers performing their official duties.

(6) Persons performing general clerical or administrative duties for a broker so long as the person does not physically show listed property.

(7) Persons acting as the manager for an apartment building or complex. However, this exception shall not apply to a person acting as an on-site manager of a condominium building or complex.

(8) Persons licensed as time-share sellers under Article 3 of this chapter performing an act consistent with that article.

(9) Transactions involving the sale, lease, or transfer of cemetery lots.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 3; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 3; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1; Act 2008-141, p. 214, § 3.)

§ 34-27-3. Nonresident may not act except in cooperation with licensed broker of state; written co-brokerage agreement to be filed.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) A licensed broker of another state may act as co-broker with a licensed broker of this state by executing a written agreement specifying each parcel of property covered by the agreement if the state in which the nonresident broker is licensed offers the same privileges to licensees of this state.

(b) Whenever an Alabama broker enters into a co-brokerage agreement with a nonresident broker to perform in Alabama any of the acts described in Section 34-27-30 the Alabama broker shall file within 10 days with the commission a copy of each such written agreement. By signing the agreement, the nonresident broker agrees to abide by Alabama law, and the rules and regulations of the commission; and further agrees that civil actions may be commenced against him in any court of competent

jurisdiction in any county of this state in which a claim may arise.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 7; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 7; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3.)

§ 34-27-4. Real Estate Commission Revenue Fund and Real Estate Commission Proportionate Fund.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

All fees, fines, charges, or other money, except as provided in Section 34-27-31, and except as provided in this section for multi-year licenses, collected by the commission shall be deposited in the State Treasury to the credit of the Real Estate Commission Revenue Fund and shall be disbursed by the state Comptroller on order of the executive director at the direction of the commission. A proportionate share of all money collected by the commission as license fees during each fiscal year of a multi-year license period or during the renewal period immediately preceding that first year, and all fees collected for research and education, shall be reserved in the State Treasury in the Real Estate Commission Proportionate Fund by the state Comptroller to be disbursed quarterly to the Real Estate Research and Education Center with the remainder to be disbursed for commission expenses incurred in that fiscal year or the subsequent fiscal years of that license period. The proportion for each fiscal year shall be determined by dividing the amount of money collected by the commission as license fees each fiscal year or during the renewal period immediately preceding the first year by the number of years within the multi-year license period. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments in the proportionate fund shall be deposited into the Real Estate Commission Revenue Fund for expenditure by the commission. All other money including penalty fees collected by the commission shall be disbursed during the fiscal year in which they are collected. The state Comptroller and State Treasurer are directed to pay all expenses incurred by the commission in performing its responsibilities and exercising its authority from the Real Estate Commission Revenue Fund in the State Treasury on warrants of the state Comptroller drawn on the State Treasury on order of the executive director. The commission may not incur expenses that exceed the total fees and charges collected and paid into the State Treasury; or that exceed the amount appropriated by the Legislature. No funds shall be withdrawn or expended except as budgeted and allotted in accordance with Sections 41-4-80 through 41-4-96. All money remaining unexpended in the Real Estate Commission Revenue Fund at the end of each fiscal year shall be retained by the commission for the following fiscal year.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 11; Acts 1953, No. 513, p. 647; Acts 1963, No. 290, p. 734; Acts 1971, No. 2485, p. 3966, § 11; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

§ 34-27-5. County list of licensees.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

References

The commission shall on the request of the probate judge of any county of this state provide the judge with a list of persons who are licensed by the commission and who reside in that county.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 15; Acts 1971, No. 2485, p. 3966, § 15; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-6. Real estate courses and schools.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) For purposes of this section and rules adopted pursuant thereto, the following terms shall have the following meanings:

(1) Administrator. A person designated by a principal school or branch school and approved by the commission to be the person responsible to the commission for all acts governed by this chapter and applicable rules which govern the operation of schools.

(2) Approved course. Any course of instruction approved by the commission that satisfies commission requirements for prelicense education, postlicense education, or continuing education.

(3) Approved school. Any proprietary educational institution offering only commission approved continuing education courses and any accredited college or university that offers any commission approved course.

(4) Branch school. Any school under the ownership of a principal school which offers commission approved courses at a permanent location.

(5) Instructional site. Any physical place where commission approved instruction is conducted apart from the principal school or branch school.

(6) Instructor. A person approved by the commission to teach approved courses in the classroom or by distance education.

(7) Licensed school. Any proprietary school that offers commission approved prelicense courses or postlicense courses, or both, only after being licensed and bonded by the commission.

(8) Principal school. Any institution or organization which is the primary school and not a branch school that is approved by the commission.

(9) Proprietary school. Any school that is not an accredited college or university and which offers commission approved prelicense courses or postlicense courses, or both, only after being licensed and bonded by the commission. Each branch school shall be licensed separately.

(b) The commission shall approve and regulate schools that offer commission approved prelicense, postlicense, and continuing education courses. The commission shall be the board, commission, or agency with the sole and exclusive authority to license proprietary schools and their branches for the limited purpose of their offerings of commission approved prelicense courses or postlicense courses, or both.

(c) The commission shall require proprietary schools to furnish a surety bond payable to the commission in the amount of twenty thousand dollars (\$20,000) with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to twenty thousand dollars (\$20,000) in the aggregate sum of all judgments which shall be recovered against the school for damages arising from the school's collection of tuition or fees, or both, from students, but failing to provide the complete instruction for which such tuition or fees were collected. The bond shall remain in effect as long as the school is licensed. In the event the bond is revoked or cancelled by the surety company, the school shall have 10 days to obtain a new bond and file it with the commission. Failure to maintain a bond shall result in the immediate suspension of the licenses of the school and all of its branches. The bond shall be provided by the school and shall also cover any branch schools named in the bond or any endorsement or amendment thereto.

(d) The commission shall charge a license fee for each licensed principal school and shall charge a fee

for each branch school in the amount of two hundred fifty dollars (\$250) per year for each year or portion of a year remaining in the respective license period. The renewal fee for each school license shall be one hundred twenty-five dollars (\$125) for each year of the license period.

(e) The commission shall require all schools to name and have approved by the commission a school administrator who shall be responsible to the commission for all actions of his or her respective school.

(f) Principal schools shall be clearly identified by signage as appropriate for the location. The signage shall set out the name of the principal school. Branch schools shall be clearly identified by signage as appropriate for the location. The signage shall set out the name of the branch school and the name of the principal school.

(g) The commission shall have the authority to reprimand, fine, suspend for a period up to two years, or revoke the license or approval of any school, administrator, or instructor for any violation of this section or any rule of the commission. The fine shall be not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500) per count.

(h) The commission shall approve, sponsor, contract for or conduct, or assist in sponsoring or conducting real estate courses for licensees, may charge fees, and may incur and pay the necessary expenses in connection therewith.

(i) The commission shall approve and regulate instructors who teach the commission approved prelicense, postlicense, and continuing education courses. The commission shall establish and collect fees as determined necessary, not to exceed fifty dollars (\$50) per instructor annually, to approved instructors who teach commission approved courses.

(j) The commission shall approve courses and establish and collect fees as determined necessary, not to exceed one hundred dollars (\$100) per application, to review each course.

(k) The commission shall establish one-year or multi-year approval periods for schools, instructors, administrators, and courses. Approval and license periods shall run from October 1 of the first year of the approval period through September 30 of the final year of the approval period.

(l) The commission shall promulgate rules and regulations as necessary to accomplish the purpose of this section in accordance with the Administrative Procedure Act.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 16; Acts 1971, No. 2485, p. 3966, § 16; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1996, No. 96-791, p. 1471, § 1; Act 2009-581, p. 1712, § 1.)

§ 34-27-7. Real Estate Commission--Created; composition; qualifications of members; appointment; terms; compensation; organization; executive director and assistant executive director generally; seal; records; immunity from suit.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) There is created the Alabama Real Estate Commission. The commission shall consist of nine members appointed by the Governor with the advice and consent of the Senate as hereinafter provided. The Governor's appointments to the commission, except for the appointment of the consumer member made pursuant to subsection (e), shall be made from a list of three persons nominated by the governing body of the Alabama Professional Real Estate Society or trade association which has the largest licensee membership, as evidenced by the filing of a verified list of paid members with the Secretary of State within 10 days of April 6, and annually by December 31 of each year thereafter. At least one of the persons nominated for each commission seat shall not be a member of the Real Estate Society or trade association. The Governor shall appoint one of the three nominated persons within 30 days following receipt of the list. If the Governor does not make an appointment within 30 days, the said Real Estate Society or trade association shall provide the Governor a list of three additional nominees. The Governor, upon receipt of the second list of nominees, shall appoint one of the six nominees

within 30 days following receipt of the nominees. Appointments made at times when the Senate is not in session shall be effective ad interim. Any appointment made by the Governor while the Senate is in session shall be submitted not later than the third legislative day following the date of appointment. Any appointment made while the Senate is not in session shall be submitted not later than the third legislative day following the reconvening of the Legislature.

(b) Ad interim appointments may be made by the Governor when the Legislature is not in session only for vacancies occurring by reason of death or resignation of a board member. Ad interim appointments shall be confirmed by the Senate at the next following regular or special session of the Legislature. Failure by the Senate to confirm shall result in a vacancy on the board that shall be filled by appointment by the Governor and confirmation by the Senate while the Legislature is in session. Any vacancy not acted upon shall remain a vacancy until it is filled at a subsequent session of the Legislature in the manner prescribed in this section.

(c) Each of the original seven appointees and their successors shall have been a resident and citizen of this state for at least 10 years prior to his or her appointment and whose vocation for at least 10 years shall have been that of a real estate broker or real estate salesperson. No person convicted of a violation of any federal or state real estate license law shall be eligible to serve. Not more than one member from any United States Congressional District shall be appointed to serve at the same time. The members of the commission shall serve five-year terms. On and after April 7, 1988, no member shall serve for more than two consecutive terms of office, except, however, each member shall hold office until his or her successor is appointed by the Governor and confirmed by the Senate. The period of time any member serves after the expiration of his or her term of office while awaiting the appointment and Senate confirmation of his or her successor shall not be considered as a consecutive term of office in determining the two consecutive terms of office limitation herein provided. All appointments shall expire on September 30 of the final year of a term, or on the date a successor to the member is appointed and confirmed. If a member does not serve his or her full term, the Governor shall appoint, in the same manner as original appointments are made, subject to confirmation by the Senate, a member to serve the unexpired portion of the term.

(d) On September 30, 1988, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a Black member who meets all of the other requirements of subsection (c), who shall serve no more than two consecutive terms of office, who shall be a full voting member, and who may be appointed from any congressional district in the state. Each successor Black member shall be appointed from a different congressional district, to be rotated equally among the remaining congressional districts.

(e) On October 1, 1996, the Governor shall appoint one new member to the commission, subject to the confirmation of the Senate, who shall be a consumer member. The consumer member of the commission shall serve no more than two consecutive terms of office, shall be a full voting member, and shall be initially appointed from any congressional district in the state. Each successor consumer member shall be appointed from a different congressional district, on a rotating basis, among the remaining congressional districts. The consumer member shall meet all of the following requirements, that he or she:

- (1) Is 21 years of age or older.
- (2) Has been a resident and citizen of this state for at least 10 years prior to appointment.
- (3) Is a registered voter in this state.
- (4) Has no felony convictions.
- (5) Is the owner of real property.
- (6) Has not been a licensed real estate broker or salesperson for the 10 years preceding appointment.
- (7) Is not related to, by blood or marriage, or employed by, a real estate licensee.

(f) On the appointment of a new commissioner, the commission shall meet and select from its

members a chair.

(g) Each member of the commission shall receive as full compensation three hundred dollars (\$300) per month. The members of the commission, its staff, and attorneys shall receive the same per diem and travel allowance paid to state employees for each day they meet to conduct the official business of the commission.

(h) The commission may employ an executive director and an assistant executive director, both of whom shall be exempted from the classified service under the general laws of the state, and other staff members necessary to discharge its duties and administer this chapter. The executive director and assistant executive director shall be employed on the basis of their education, experience, and skills in administration and management. The commission shall advertise to seek quality applicants possessing the qualifications and shall conduct interviews of the top applicants. The assistant executive director shall act as and have authority of the executive director in his or her absence. The commission shall determine the duties and fix the compensation of the executive director, assistant executive director, and other staff members, subject to the general laws of the state.

(i) The commission shall adopt a seal by which it shall authenticate records and documents. Copies of all records and documents in the office of the commission duly certified and authenticated by the seal of the commission shall be received in evidence in all courts equally and with the same effect as the original. All public records kept in the office of the commission shall be open to public inspection during reasonable hours and under reasonable circumstances.

(j) No commissioner shall be liable for damages resulting from any act performed in carrying out his or her duties as a commissioner.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 4; Acts 1971, No. 2485, p. 3966, § 4; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1981, No. 81-386, p. 572, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1.)

§ 34-27-8. Real Estate Commission--Quorum; rules and regulations; agency disclosure clause.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) A majority of the commission members shall constitute a quorum for the conduct of commission business. The commission may adopt and enforce all rules and regulations pursuant to the state administrative procedure statutes necessary for the administration of this chapter, and to otherwise do all things necessary and convenient for effecting this chapter.

(b) In addition to the powers granted in this section, the commission may adopt and enforce rules and regulations governing the requirements of agency disclosure by licensed brokers and salespersons.

(c) Each offer to purchase prepared after August 1, 1998, shall have prominently displayed the following AGENCY DISCLOSURE clause which shall be completed and initialed as indicated:

The listing company _____ is:

(Two blocks may be checked)

☐ An agent of the seller.

☐ An agent of the buyer.

☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.

☐ Assisting the _____ buyer _____ seller as a transaction broker.

The selling company _____ is:

(Two blocks may be checked)

- ☐ An agent of the seller.
- ☐ An agent of the buyer.
- ☐ An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- ☐ Assisting the _____ buyer _____ seller as a transaction broker.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 19; Acts 1971, No. 2485, p. 3966, § 19; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-211, p. 341, § 10; Act 98-618, p. 1359, § 1.)

§ 34-27-9. Real Estate Commission--Bond of director and executive secretary. Repealed by Acts 1985, No. 85-750, p. 1204, § 2, effective May 29, 1985.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

§ 34-27-10. Chapter cumulative.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The requirements of this chapter shall be in addition to the requirements of existing or future laws or ordinances of any state, county or municipality taxing, licensing or regulating real estate brokers or salesmen.

(b) A licensee under this chapter shall not be subject to the requirements of Section 40-12-150 when he sells, offers to sell or advertises for sale realty situated in another state or county.

(c) Licensees under this chapter shall be exempt from the provisions of Section 5-19-22.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 21; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 21; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-11. Penalties.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) Any person or corporation which violates any provision of this chapter commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

(b) Any person who files with the commission any notice, statement or other document or information required under the provisions of this chapter which is false or untrue or contains any material misstatement of fact commits a Class A misdemeanor and, on conviction, shall be punished accordingly.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 18; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

ARTICLE 2. . LICENSES.

§ 34-27-30. Required.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be unlawful for any person, sole proprietorship, partnership, corporation, branch office, or

lawfully constituted business organization, as the Legislature may from time to time provide, for a fee, commission, or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission, or other valuable consideration from another, to do any of the following unless licensed under Articles 1 and 2 of this chapter:

- (1) Sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.
- (2) Offer to sell, exchange, purchase, rent, or lease real estate situated within the State of Alabama.
- (3) Negotiate or attempt to negotiate the listing, sale, exchange, purchase, rental, or leasing of real estate situated within the State of Alabama.
- (4) List or offer or attempt or agree to list real estate for sale, rental, lease, exchange, or trade situated within the State of Alabama.
- (5) Auction, offer, or attempt or agree to auction, real estate situated within the State of Alabama.
- (6) Buy or sell or offer to buy or sell, or otherwise deal in options on real estate situated within the State of Alabama.
- (7) Aid, attempt, or offer to aid in locating or obtaining for purchase, rent, or lease any real estate situated within the State of Alabama.
- (8) Procure or assist in procuring of prospects for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.
- (9) Procure or assist in the procuring of properties for the purpose of effecting the sale, exchange, lease, or rental of real estate situated within the State of Alabama.
- (10) Present himself or herself, or be presented, as being able to perform an act for which a license is required.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 2; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 1; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Act 2006-601, p. 1647, § 1; Act 2008-141, p. 214, § 3.)

§ 34-27-30.1. License requirement or tax on certain real estate companies prohibited. Amended and renumbered as § 11-51-132 by Act 2008-141, p. 214, § 3, effective April 10, 2008.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

§ 34-27-30.2. Fees prohibited on signs advertising real property for sale by realtors; restrictions on signs.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The rights of real estate licensees shall include the right to advertise real property for sale, lease, or transfer by other conveyance using signs affixed to or located on the real property. A municipal corporation or a political subdivision of the state may not impose any fee or tax for the use of signs affixed to or located on the real property which is for sale, lease, or transfer by other conveyance nor may a municipal corporation or a political subdivision of the state impose any fee or tax for the use of signs near such property directing people to such property.

(b) Notwithstanding the foregoing, nothing in this section shall limit the ability of a political subdivision to enact and enforce reasonable restrictions on the size, height, and placement of signs on private property or public right-of-way and to impose monetary penalties for a violation of such restrictions.

CREDIT(S)

(Act 2008-383, p. 713, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section is effective August 1, 2008.

§ 34-27-31. Recovery Fund created; fees paid to fund; injured party's recovery from fund; procedures, appeals, etc.; licensee to report any legal action taken against him.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The commission shall establish and maintain a Recovery Fund from which an aggrieved party may recover actual or compensatory damages, not including interest and court costs, sustained only within the State of Alabama as a result of conduct of a broker or salesperson in violation of Article 1 or 2 of this chapter or the rules and regulations of the commission.

(b) Notwithstanding any other provision to the contrary, payments from the Recovery Fund are subject to the following conditions and limitations:

(1) The fund shall not be obligated for the acts or omissions of a broker or salesperson while acting on his or her own behalf or on behalf of his or her child, spouse, or parent regarding property in which he or she or his or her spouse, child, or parent has, or is attempting to acquire, an interest; or for the acts or omissions of an inactive licensee; or for the acts or omissions of a corporation, branch office, or partnership except through its licensed salespersons and brokers as individuals. The fund shall not be obligated for any judgment or settlement resulting from an act or omission of a broker or salesperson committed in conjunction with the marketing or development of a time-sharing project.

(2) Payments for claims based on judgments or settlements against any one person shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

(3) Payments for claims arising out of the same transaction shall not exceed twenty-five thousand dollars (\$25,000) in the aggregate, regardless of the number of claimants.

(4) The fund shall not be liable for payments to a licensee or bonding company unless the licensee or bonding company was a principal party to a real estate transaction on which the judgment was based.

(c)(1) When any person makes application for an original license as a broker or salesperson, he or she shall pay, in addition to all other fees, a fee of thirty dollars (\$30) for deposit in the Recovery Fund. In the event the commission does not issue the license, this fee shall be returned to the applicant.

(2) Any salesperson licensee who has paid the additional fee and who has attained a broker license and has paid the additional broker fee shall be refunded, upon request, one of the additional fees and no other salesperson licensee shall be required to pay an additional fee upon attaining broker status.

(3) Payments made to the Recovery Fund in lieu of bond by a licensee shall be paid only one time when he or she is originally licensed by the commission.

(d) When the balance remaining in the Recovery Fund is less than five hundred thousand dollars (\$500,000), each broker and salesperson shall on order of the commission pay a fee of thirty dollars (\$30) per license for deposit in the Recovery Fund. A licensee on inactive status shall not be required to contribute to the fund at that time. A fee of thirty dollars (\$30) shall be paid at the time a license is activated.

(e)(1) When an aggrieved person commences an action for a judgment which may result in collection from the Recovery Fund, the aggrieved person shall notify the commission in writing, by certified mail, return receipt requested, to this effect at the time of the commencement of the action.

(2) When the commission receives the notice described in subdivision (e)(1), it may enter an appearance, file pleadings and motions, appear at court hearings, defend the action, or take

whatever other action it deems appropriate either on the behalf and in the name of the defendant, or in its own name. The commission may also take any appropriate method of review either on behalf and in the name of the defendant, or in its own name. The commission may settle or compromise the claim. Any expenses incurred by the commission in defending, satisfying, or settling any claim shall be paid from the Recovery Fund.

(3) When an aggrieved person recovers a valid judgment in a court of competent jurisdiction against a broker or salesperson on the grounds described in subsection (a) above, which occurred on or after October 1, 1979, the aggrieved person may, on the termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, on 10 days' written notice to the commission, may apply to the court for an order directing payment out of the Recovery Fund of the amount unpaid on the judgment.

(4) The court shall proceed on the application immediately and, on hearing, the aggrieved person shall be required to show each of the following:

- a. He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent.
- b. He or she has obtained a judgment, as described in subdivision (e)(3), stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in the action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.
- c. The following items, if recovered by him or her, have been applied to the actual compensatory damages awarded by the court:
 1. Any amount recovered from the judgment debtor.
 2. Any amount recovered from bonding companies.
 3. Any amount recovered in out-of-court settlements.

(5) The court shall order that the Recovery Fund pay whatever sum it finds due under this section.

(6) Should the commission pay from the Recovery Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the commission. The commission may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent a year, the amount paid from the Recovery Fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

(7) If the balance in the Recovery Fund is insufficient to satisfy a duly authorized claim or portion of a claim, the commission shall, when sufficient money has been deposited in the Recovery Fund, satisfy the unpaid claims or portions, plus interest at the rate of 12 percent a year in the order that the claims were originally filed.

(f) The sums received by the commission pursuant to this section shall be deposited into the State Treasury and held in a special fund to be known as the Real Estate Recovery Fund, and shall be held by the commission in trust for carrying out the purposes of the Recovery Fund. These sums may be invested by the State Treasurer in any investments which are legal for domestic life insurance companies under the laws of this state. Any interest or other income from investments of the Recovery Fund shall be deposited in the Real Estate Commission Revenue Fund with one-half being transmitted to the University of Alabama Real Estate Research and Education Center.

(g) The commission may transfer funds one time only from the Real Estate Recovery Fund to the University of Alabama Real Estate Research and Education Center. The amount of the transfer may not reduce the Real Estate Recovery Fund below six hundred thousand dollars (\$600,000).

(h) When, on order of the court, the commission has paid from the Recovery Fund any sum, the

commission shall be subrogated to all the rights of the judgment creditor, and all his or her right, title, and interest in the judgment, to the extent of the amount paid from the Recovery Fund, shall be assigned to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited to the fund.

(i) The failure of an aggrieved person to strictly comply with all of the provisions of this section shall constitute a waiver of any rights under this section.

(j) Each licensee shall notify the commission within 10 days after notice to him or her of the institution of any criminal prosecution against him or her, or of a civil summons and complaint against him or her, if the subject matter of the civil complaint involves a real estate transaction or involves the goodwill of an existing real estate business. The notification shall be in writing by certified mail and shall include a copy of the summons and complaint. If a criminal charge is made, it shall include the specific charge made against the licensee together with a copy of any indictment or information alleging the charges.

(k) Each licensee shall notify the commission in writing by certified mail within 10 days after he or she receives notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a real estate transaction or the goodwill of a real estate business has resulted in a judgment or been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee notice.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 5; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 5; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1.)

§ 34-27-32. Requirements for license; application; place of business; branch offices; multiple brokers; fees.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) A license for a broker or a salesperson shall be registered to a specific real estate office and shall be issued only to, and held only by, a person who meets all of the following requirements:

(1) Is trustworthy and competent to transact the business of a broker or salesperson in a manner that safeguards the interest of the public.

(2) Is a person whose application or license has not been rejected or revoked in any state within two years prior to date of application on any grounds other than failure to pass a written examination. Any applicant whose license has been revoked shall meet all the requirements imposed on an original applicant for a license and shall not be relicensed without the approval of the commissioners.

(3) Is at least 19 years old.

(4) Is a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, or is an alien with permanent resident status.

(5) Is a person who, if a nonresident, agrees to sign an affidavit stating the following and in the following form:

"I, as a nonresident applicant for a real estate license and as a licensee, agree that the Alabama Real Estate Commission shall have jurisdiction over me in any and all of my real estate related activities the same as if I were an Alabama resident licensee. I agree to be subject to investigations and disciplinary actions the same as Alabama resident

licensees. Further, I agree that civil actions may be commenced against me in any court of competent jurisdiction in any county of the State of Alabama.

"I hereby appoint the Executive Director or the Assistant Executive Director of the Alabama Real Estate Commission as my agent upon whom all disciplinary, judicial, or other process or legal notices may be served. I agree that any service upon my agent shall be the same as service upon me and that certified copies of this appointment shall be deemed sufficient evidence and shall be admitted into evidence with the same force and effect as the original might be admitted. I agree that any lawful process against me which is served upon my agent shall be of the same legal force and validity as if personally served upon me and that this appointment shall continue in effect for as long as I have any liability remaining in the State of Alabama. I understand that my agent shall, within a reasonable time after service upon him or her, mail a copy of the service by certified mail, return receipt requested, to me at my last known business address.

"I agree that I am bound by all the provisions of the Alabama Real Estate License Law the same as if I were a resident of the State of Alabama.

____ legal signature of applicant"

The commission may reject the application of any person who has been convicted of or pleaded guilty or nolo contendere to a felony or a crime involving moral turpitude.

(b)(1) A person who holds a current real estate salesperson license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal salesperson license on a form prescribed by the commission. A person who holds a current broker license in another state, including persons who move to and become residents of Alabama, shall apply for a reciprocal broker license on a form prescribed by the commission. The applicant shall submit proof that he or she has a current real estate license in another state as evidenced by a certificate of licensure, together with any other information required by the commission. The applicant shall also show proof that he or she has completed at least six hours of course work in Alabama real estate which is approved by the commission. Applicants for a reciprocal license shall not be subject to the complete examination or temporary license requirements of Section 34-27-33, but shall pass a reasonable written examination prepared by the commission on the subject of Alabama real estate. A person who holds a reciprocal license shall show proof of completion of continuing education either by meeting the requirements of Section 34-27-35 or by showing proof that his or her other state license remains active in that state. The fees for issuance and renewal of a reciprocal license shall be the same as those for original licenses pursuant to Section 34-27-35. The recovery fund fee for issuance of a reciprocal license shall be the same as for an original license pursuant to Section 34-27-31.

(2) A person who holds a current Alabama license who moves to and becomes a resident of the state shall within 10 days submit to the commission notice of change of address and all other license status changes.

(c) A person who does not hold a current real estate broker license in another state desiring to be a real estate broker in this state shall apply for a broker's license on a form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application, he or she shall submit all of the following:

- (1) Proof that he or she has had an active real estate salesperson's license in any state for at least 24 months of the 36 month period immediately preceding the date of application.
- (2) Proof that he or she is a high school graduate or the equivalent.
- (3) Proof that he or she has completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.
- (4) Any other information requested by the commission.

(d) A person who does not hold a current real estate salesperson license in another state desiring to be a real estate salesperson in this state shall apply for a salesperson's license with the commission on a

form prescribed by the commission which shall specify the real estate office to which he or she is registered. Along with the application he or she shall furnish all of the following:

- (1) Proof that he or she is a high school graduate or the equivalent.
 - (2) Proof that he or she has successfully completed a course in real estate approved by the commission, which shall be a minimum of 60 clock hours.
 - (3) Any other information required by the commission.
- (e) An application for a company license or branch office license shall be made by a qualifying broker on a form prescribed by the commission. The qualifying broker shall be an officer, partner, or employee of the company.
- (f) An applicant for a company or broker license shall maintain a place of business.
- (g) If the applicant for a company or broker license maintains more than one place of business in the state, he or she shall have a company or branch office license for each separate location or branch office. Every application shall state the location of the company or branch office and the name of its qualifying broker. Each company or branch office shall be under the direction and supervision of a qualifying broker licensed at that address. No person may serve as qualifying broker at more than one location. The qualifying broker for the branch office and the qualifying broker for the company shall share equal responsibility for the real estate activities of all licensees assigned to the branch office or company.
- (h) No person shall be a qualifying broker for more than one company or for a company and on his or her own behalf unless:
- (1) All companies for which he or she is and proposes to be the qualifying broker consent in writing.
 - (2) He or she files a copy of the written consent with the commission.
 - (3) He or she will be doing business from the same location.
- A person licensed under a qualifying broker may be engaged by one or more companies with the same qualifying broker.
- (i) A company license shall become invalid on the death or disability of a qualifying broker. Within 30 days after the death or disability, the corporation, or the remaining partners or the successor partnership, if any, may designate another of its officers, members, or salespersons to apply for a license as temporary qualifying broker. The person designated as temporary qualifying broker shall either be a broker or have been a salesperson for at least one year prior to filing the application. If the application is granted, the company may operate under that broker for no more than six months after the death or disability of its former qualifying broker. Unless the company designates a fully licensed broker as the qualifying broker within the six months, the company license shall be classified inactive by the commission.
- (j) The commission may charge any applicant a fee for a criminal record search of the applicant in the same amount as is charged the commission by the Department of Public Safety or other agency for the search.
- (k) The commission may charge a fee of ten dollars (\$10) for furnishing any person a copy of a license, certificate or other official record of the commissioner.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 6; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 6; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 568, p. 1306, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1; Act 2008-141, p. 214, § 3; Act 2009-617, p. 1781, § 1.)

§ 34-27-33. Examinations; temporary and original salesperson licenses; post license course requirements.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a)(1) In addition to other requirements of this chapter, every applicant for a broker's or salesperson's license shall submit to a reasonable written examination. The commission shall conduct examinations at places and times it prescribes. The commission may contract with an independent testing agency to prepare, grade, or conduct the examination.

(2) Effective October 1, 2001, and thereafter, the fee for each examination and the provisions for payment and forfeiture shall be as specified in the contract with the independent testing agency.

(b) Within 90 days after passing the examination, the applicant shall secure a qualifying broker and meet all requirements of this chapter and the board shall issue an active license or classify the license as inactive. In order to obtain an active license, the applicant's qualifying broker shall sign and submit to the commission a sworn statement that the applicant is in his or her opinion honest, trustworthy, and of good reputation and that the broker accepts responsibility for the actions of the salesperson as set out in Section 34-27-31. The applicant's qualifying broker shall be licensed in Alabama.

(c)(1) On passing the examination and complying with all other conditions for licensure, a temporary license certificate shall be issued to the applicant. The applicant is not licensed until he or she or his or her qualifying broker actually receives the temporary license certificate. A temporary license shall be valid only for a period of one year following the first day of the month after its issuance.

(2) The holder of a temporary license shall not be issued an original license until he or she has satisfactorily completed a 30-hour post-license course prescribed by the commission. The holder of a temporary license must complete the course within six months of issuance of his or her temporary license and have his or her original license issued, otherwise his or her temporary license certificate shall automatically be placed on inactive status by the commission. During the remaining six months his or her temporary license is valid, the holder of a temporary license may complete the course and have his or her original license issued. If the holder of a temporary license does not complete the course and have his or her original license issued within one year following the first day of the month after its issuance, the temporary license shall automatically expire and lapse. A temporary license is not subject to renewal procedures in this chapter and may not be renewed.

(3) In order to have a temporary license issued to active status, the applicant shall pay the Recovery Fund fee specified in this chapter. The holder of a temporary license shall, upon satisfactory completion of the course, pay the original license fee specified in this chapter to have his or her original license issued. An applicant for an original license who has paid the Recovery Fund fee specified in this chapter shall not be required to pay another Recovery Fund fee in order to have his or her original license issued.

(4) The holder of an original license who has satisfactorily completed the post license course and whose original license has been issued, shall not be subject to the continuing education requirements in this chapter for the first renewal of his or her original license.

(d) This section shall become effective for licenses issued beginning October 1, 1993.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 8; Acts 1963, No. 290, p. 734, § 8; Acts 1971, No. 2485, p. 3966, § 8; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1992, No. 92-177, p. 305, § 3; Act 2001-310, p. 391, § 1; Act 2008-141, p. 214, § 3.)

§ 34-27-34. Who may serve as qualifying broker; responsibility of qualifying broker; change of broker; termination of qualifying broker's status.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a)(1) A broker may serve as qualifying broker for a salesperson or associate broker only if licensed in Alabama, his or her principal business is that of a real estate broker, and he or she shall be in a position to actually supervise the real estate activities of the associate broker or salesperson on a full-time basis.

(2) A salesperson or associate broker shall not perform acts for which a license is required unless licensed under a qualifying broker. A qualifying broker shall be held responsible to the commission and to the public for all acts governed by this chapter of each salesperson and associate broker licensed under him or her and of each company for which he or she is the qualifying broker. It shall be the duty of the qualifying broker to see that all transactions of every licensee engaged by him or her or any company for which he or she is the qualifying broker comply with this chapter. Additionally, the qualifying broker shall be responsible to an injured party for the damage caused by any violation of this chapter by any licensee engaged by the qualifying broker. This subsection does not relieve a licensee from liability that he or she would otherwise have.

(3) The qualifying brokers' supervision responsibilities, as prescribed herein, over the real estate activities of associate brokers and salespersons licensed under him or her are not intended to and should not be construed as creating an employer-employee relationship contrary to any expressed intent of the qualifying broker and licensee to the contrary.

(b) Any salesperson or associate broker who desires to change his or her qualifying broker shall give notice in writing to the commission, and shall send a copy of the notice to his or her qualifying broker. The new qualifying broker shall file with the commission a request for the transfer and a statement assuming liability for the licensee. On payment of a fee of twenty-five dollars (\$25), a new license certificate shall be issued to the salesperson or associate broker for the unexpired term of the original license. A fee of twenty-five dollars (\$25) shall also be charged for any of the following license changes:

(1) Change of qualifying broker by a company or sole proprietorship. The fee is paid for the license or licenses on which the current and new qualifying brokers' names appear. In cases where a company has a branch office or offices and the main office qualifying broker is changed, the fee is paid for each branch office license and for the license of each branch qualifying broker.

(2) Change of personal name of a qualifying broker. The fee is paid for the license or licenses on which the current qualifying broker's name appears.

(3) Change of personal name of a salesperson or associate broker. The fee is paid for the license on which the name appears.

(4) Change of business location. The fee is paid for the license or licenses on which the address appears.

(5) Change of business name. The fee is paid for the license or licenses on which the name appears.

(6) Change of status from inactive to active. The fee is paid for each license being changed from inactive to active status. No fee is charged for the change from active to inactive status.

(c) A person who wishes to terminate his or her status as qualifying broker for a licensee may do so by notifying the licensee and the commission in writing and sending the licensee's license certificate to the commission or verifying in writing to the commission that the certificate has been lost or destroyed.

(d) A person who wishes to terminate his or her status as a qualifying broker for a company may do so by submitting written notice to the company or qualifying broker of the parent company and the

commission.

(e) A salesperson or associate broker shall not perform any act for which a license is required after his or her association with his or her qualifying broker has been terminated, or if he or she changes qualifying brokers, until a new active license has been issued by the commission.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 9; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 9; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1982, No. 82-231, p. 282, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, §

§ 34-27-35. License certificates generally.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The commission shall prescribe the form and content of license certificates issued. Each qualifying broker's license certificate shall show the name and business address of the broker. The license certificate of each active salesperson or associate broker shall show his or her name and address. The license certificate of each active salesperson or associate broker shall be delivered or mailed to his or her qualifying broker. Each license certificate shall be kept by the qualifying broker and shall be publicly displayed at the address which appears on the license certificate.

(b) The commission may establish a one-year or multi-year license period.

(c)(1) The fee for a temporary license shall be one hundred fifty dollars (\$150). The original fee for a broker's license shall be one hundred fifty dollars (\$150) and, beginning with the license period effective October 1, 2002, the renewal fee for a broker's license shall be seventy-five dollars (\$75) per year for each year of the license period. The original fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be sixty-five dollars (\$65) per year for each year of the license period. The original fee for each company license shall be sixty-five dollars (\$65) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be sixty-five dollars (\$65) per year for each year of the license period.

(2) Beginning with the license period effective October 1, 2004, the renewal fee for a broker's license shall be ninety-five dollars (\$95) per year for each year of the license period. The original fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each salesperson's license shall be eighty-five dollars (\$85) per year for each year of the license period. The original fee for each company license shall be eighty-five dollars (\$85) per year for each year or portion of a year remaining in the respective license period, and the renewal fee for each license shall be eighty-five dollars (\$85) per year for each year of the license period.

(d) The renewal research and education fee shall be two dollars and fifty cents (\$2.50) per year for each year of the license period, and shall be paid at the time of license renewal by all brokers and salespersons in addition to the license renewal fees set out in this section. Collection of this fee shall begin and shall apply to all broker and salesperson renewals on and after August 1, 1996, except that brokers who hold more than one broker's license shall pay the fee for only one license at each renewal.

(e) The original research and education fee shall be thirty dollars (\$30) and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of an original broker's license, and shall be paid at the time of all applications received on and after October 15, 1995, for issuance of a temporary salesperson's license. The original research and education fee shall also be paid by reciprocal salespersons. This is in addition to the original license fees set out in this section. This

thirty dollar (\$30) original research and education fee is a one-time fee which no person shall be required to pay more than once.

(f) The license of a salesperson who is subsequently issued a broker's license automatically terminates upon the issuance of his or her broker's license certificate. The salesperson's license certificate shall be returned to the commission in order for a broker's license to be issued. No refund shall be made of any fee or Recovery Fund deposit pertaining to the salesperson's, broker's, or company's license.

(g) The commission shall prescribe a license renewal form, which shall accompany renewal fees which shall be filed on or before August 31 of the final year of each license period in order for the respective license to be renewed on a timely basis for the following license period. If any of the foregoing are filed during the period from September 1 through September 30 of the final year of a license period, the one hundred fifty dollar (\$150) penalty set out below shall be paid in addition to the renewal fees. Failure to meet this September 30 deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in these cases. Licensees filing during the period from September 1 of the final year of a license period through September 30 of the initial year of a license period shall pay the required license fee, plus a penalty of one hundred fifty dollars (\$150).

(h) The renewal form shall be mailed by the commission to the licensee's place of business, if an active licensee, or to his or her residence if an inactive licensee, prior to August 1 of the final year of each license period. Each licensee shall notify the commission in writing of any change in his or her business or residence address within 30 days of the change.

(i) Every license shall expire at midnight on September 30 of the final year of each license period. An expired license may be renewed during the 12-month period following the license period for which the license was current. A licensee who fails to renew before the end of the 12-month period following the license period for which the license was issued has a lapsed license, and shall be subject to all requirements applicable to persons who have never been licensed, however, the commission may upon determination of hardship, allow later renewal upon payment of all fees and penalties. An inactive license must be renewed in the same manner as an active license.

(j)(1) Each applicant for renewal of an active salesperson or broker license issued by the commission shall, on or before September 30 of the final year of each license period, submit proof of completion of not less than 15 clock hours of approved continuing education course work to the commission, in addition to any other requirements for renewal. Failure to meet this deadline shall result in the license being placed on inactive status on the following October 1, and the license shall be subject to all reactivation requirements. Reactivations shall be processed in the order received as evidenced by postmark or delivery date. Certified or registered mail may be used for reactivation in this case. Proof of attendance at the course work, whether or not the applicant attained a passing grade in the course, shall be sufficient to satisfy requirements for renewal. The 15 clock hours' course work requirement shall apply to each two-year license renewal, and hours in excess of 15 shall not be cumulated or credited for the purpose of subsequent license renewals. The commission shall develop standards for approval of courses, and shall require certification of the course work of the applicant.

Time served as a member of the state Legislature during each license renewal period shall be deemed the equivalent of the 15 hours course work and shall satisfy the requirements of this subsection.

(2) This section shall apply to renewals of licenses which expire after September 30, 1986. An applicant for first renewal who has been licensed for not more than one year shall not be required to comply with this section for the first renewal of the applicant's license. Any licensee reaching the age of 65 on or before September 30, 2000, and having been licensed 10 years prior to that date shall be exempt from this section.

(3) Continuing education shall not result in a passing or failing grade.

(k) A licensee may request that the commission issue his or her license to inactive status. Inactive

licenses shall be held at the commission office until activated. No act for which a license is required shall be performed under an inactive license.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 10; Acts 1963, No. 290, p. 734, § 8; Acts 1967, No. 386, p. 973, § 1; Acts 1971, No. 2485, p. 3966, § 10; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1979, No. 79-690, p. 1221, § 1; Acts 1982, No. 82-231, p. 292, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-298, p. 427, § 1; Acts 1986, No. 86-418, p. 624, § 1; Acts 1988, No. 88-214, p. 315, § 3; Acts 1989, No. 89-284, p. 447, § 4; Acts 1992, No. 92-177, p. 305, § 3; Acts 1995, No. 95-679, p. 1483, § 1; Acts 1996, No. 96-791, p. 1471, § 1; Act 99-518, p. 1140, § 1; Act 2001-310, p. 391, § 1; Act 2003-298, p. 701, § 1; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

§ 34-27-35.1. Errors and omissions insurance. Repealed by Act 2003-298, p. 701, § 2, effective June 18, 2003.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

§ 34-27-36. Disciplinary action--Generally.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The commission or its staff may on its own, or on the verified complaint in writing of any person, investigate the actions and records of a licensee. The commission may issue subpoenas and compel the testimony of witnesses and the production of records and documents during an investigation. If probable cause is found, a formal complaint shall be filed and the commission shall hold a hearing on the formal complaint. The commission shall revoke or suspend the license or impose a fine of not less than one hundred dollars (\$100) nor more than two thousand five hundred dollars (\$2,500), or both, or reprimand the licensee in each instance in which the licensee is found guilty of any of the following acts set out in this section. The commission may revoke or suspend a license until such time as the licensee has completed an approved continuing education course and/or made restitution to accounts containing funds to be held for other parties. The commission may also stay the revocation or suspension of a license and require completion of an approved education course and/or the making of restitution to accounts containing funds to be held for other parties.

(1) Procuring or attempting to procure, a license, for himself or herself or another, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a license.

(2) Engaging in misrepresentation or dishonest or fraudulent acts when selling, buying, trading, or renting real property of his or her own or of a spouse or child or parent.

(3) Making a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.

(4) Making any false promises of a character likely to influence, persuade, or induce any person to enter into any contract or agreement.

(5) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salespersons or any medium of advertising or otherwise.

(6) Publishing or causing to be published any advertisement which deceives or which is likely to deceive the public, or which in any manner tends to create a misleading impression or which fails to identify the person causing the advertisement to be placed as a licensed broker or

salesperson.

(7) Acting for more than one party in a transaction without the knowledge and consent in writing of all parties for whom he or she acts.

(8)a. Failing, within a reasonable time, to properly account for or remit money coming into his or her possession which belongs to others, or commingling money belonging to others with his or her own funds.

b. Failing to deposit and account for at all times all funds belonging to, or being held for others, in a separate federally insured account or accounts in a financial institution located in Alabama.

c. Failing to keep for at least three years a complete record of funds belonging to others showing to whom the money belongs, date deposited, date of withdrawal, and other pertinent information.

(9) Placing a sign on any property offering it for sale, lease, or rent without the consent of the owner.

(10) Failing to voluntarily furnish a copy of each listing, contract, lease, and other document to each party executing the document with reasonable promptness.

(11) Paying any profit, compensation, commission, or fee to, or dividing any profit, compensation, commission, or fee with, anyone other than a licensee or multiple listing service. This subdivision shall not prevent an associate broker or salesperson from owning any lawfully constituted business organization, including, but not limited to, a corporation or limited liability company or limited liability corporation, for the purpose of receiving payments contemplated in this subsection. The business organization shall not be required to be licensed under this chapter, and shall not engage in any other activity requiring a real estate license.

(12) Paying or receiving any rebate from any person in a real estate transaction.

(13) Inducing any party to a contract to break the contract for the purpose of substituting a new contract, where the substitution is motivated by the personal gain of the licensee.

(14) If the licensee is a salesperson or associate broker, accepting a commission or other valuable consideration for performing any act for which a license is required from any person except his or her qualifying broker.

(15) If a qualifying broker or company, allowing a salesperson or associate broker licensed under him or her to advertise himself or herself as a real estate agent without the name or trade name of the qualifying broker or company appearing prominently on the advertising; or if the licensee is a salesperson or associate broker, advertising himself or herself as a real estate agent without the name or trade name of the qualifying broker or company under whom the salesperson or associate broker is licensed appearing prominently on the advertising.

(16) Presenting to the commission, as payment for a fee or fine, a check that is returned unpaid.

(17) Establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a licensee, or aiding, abetting, or conspiring with a person to circumvent the requirements of this chapter.

(18) Failing to disclose to an owner the licensee's intention to acquire, directly or indirectly, an interest in property which he or she or his or her associates have been employed to sell.

(19) Violating or disregarding any provision of this chapter or any rule, regulation, or order of the commission.

(20) If a broker, accepting a "net listing" agreement for sale of real property or any interest therein. A "net listing" is one that stipulates a net price to be received by the owner with the excess due to be received by the broker as his or her commission.

(21) Misrepresenting or failing to disclose to any lender, guaranteeing agency, or any other interested party, the true terms of a sale of real estate.

(22) Failing to inform the buyer or seller at the time an offer is presented that he or she will be

expected to pay certain closing costs and the approximate amount of those costs.

(23)a. Having entered a plea of guilty or nolo contendere to, or having been found guilty of or convicted of a felony or a crime involving moral turpitude.

b. Having a final money judgment rendered against him or her which results from an act or omission occurring in the pursuit of his or her real estate business or involves the goodwill of an existing real estate business.

(24) Offering free lots or conducting lotteries for the purpose of influencing a party to purchase or lease real estate.

(25) Failing to include a fixed date of expiration in a written listing agreement or failing to leave a copy of the agreement with the principal.

(26) Conduct which constitutes or demonstrates dishonest dealings, bad faith, or untrustworthiness.

(27) Acting negligently or incompetently in performing an act for which a person is required to hold a real estate license.

(28) Failing or refusing on demand to produce a document, book, or record in his or her possession concerning a real estate transaction conducted by him or her for inspection by the commission or its authorized personnel or representative.

(29) Failing within a reasonable time to provide information requested by the commission during an investigation or after a formal complaint has been filed.

(30) Failing without cause to surrender to the rightful owner, on demand, a document or instrument coming into his or her possession.

(31) If a qualifying broker or company, failing to keep in their files copies of all contracts, leases, listings, and other records pertinent to real estate transactions for a period of three years.

(b) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of Article 1 or 2 of this chapter or any rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with Articles 1 and 2 of this chapter or any rule or order of the commission. To prevail in an action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation.

(c)(1) Notwithstanding any other provisions of law, the commission may issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. The order shall be entered by the executive director after a finding of probable cause by the commission staff. The order shall become final 15 days after its service upon the accused, unless the accused requests a hearing before the commission. Upon hearing the case and finding violations, the commission may make the cease and desist order final and the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(2) Notwithstanding any other provisions of law, the commission may decline to issue an order requiring any accused person, firm, corporation, or business entity to cease and desist from engaging in activities requiring a license under this chapter when the accused person, firm, corporation, or business entity is not licensed under this chapter. In this instance, the commission shall proceed to give appropriate notice of the violations and hold a hearing thereon. Upon hearing the case and finding violations, the commission may impose a fine for each violation in an amount consistent with the range of fines applicable to licensees, and in

addition, may impose a fine in the amount of any gain or economic benefit that was derived from the violation, and in addition, may impose a fine in the amount of the commission's costs incurred. Any fine or fines not paid as ordered shall be enforceable in any court with competent jurisdiction and proper venue.

(d) The commission shall notify the licensee and qualifying broker in writing regarding the complaint.

(e) The commission shall notify the complainant, licensee, and qualifying broker in writing regarding the disposition of the complaint.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 12; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 12; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, § 1; Acts 1989, No. 89-284, p. 447, § 3; Acts 1992, No. 92-177, p. 305, § 3; Acts 1996, No. 96-791, p. 1471, § 1; Act 2003-298, p. 701, § 1; Act 2005-314, 1st Sp. Sess., p. 646, § 1; Act 2006-601, p. 1647, § 1; Act 2009-617, p. 1781, § 1.)

§ 34-27-37. Disciplinary action--Procedure in action.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) An action against an accused shall begin by serving the accused either personally or by certified mail with a copy of the formal complaint against him or her. The accused shall be given at least 15 days' notice of the time, date, and place of hearing. If the commission refuses to license an applicant, notice of the refusal shall be given to the applicant, and he or she may, within 15 days after delivery of the notice, file a request for a hearing. The applicant or accused shall have an opportunity to be heard in person or by counsel, to offer testimony in his or her behalf, and to examine witnesses. Hearings shall be held in Montgomery County unless the commission decides to hold the hearing in the county in which the applicant or accused resides, maintains his or her principal place of business, or any other county in which the commission has scheduled a meeting. At hearings, all witnesses shall be sworn by a member of the commission, the executive director, the assistant executive director, or a hearing officer. The commission shall render a written order within 30 days from the final date of hearing. If the matter alleged in the complaint is the subject of an action pending in any court, the commission may withhold rendering or implementing its order pending disposition of the court action.

(b) The commission may issue subpoenas for the attendance of witnesses and the production of records and documents, either at the instance of the commission or the accused. The process issued by the commission shall extend to all parts of the state, and such process shall be served by a person designated by the commission or by mailing the process by certified mail. A subpoenaed witness who appears in a proceeding before the commission shall receive fees, mileage, and expense allowances as authorized by the commission. All fees, mileage, and expense payments shall be taxed against the party or parties subpoenaing the witness.

(c) If in a proceeding before the commission, a subpoenaed witness fails or refuses to attend or refuses to testify or fails or refuses to produce subpoenaed documents or records, his or her attendance and testimony or the production of the documents and records shall be enforced by any circuit court of this state, in the same manner as the attendance and testimony of witnesses is enforced in civil cases.

(d) An accused, applicant, or other party to a case heard by the commission who is aggrieved by a final decision, may file an application for rehearing specifying grounds for relief within 30 days of receiving notice of the decision.

An application for rehearing does not modify the effective date of the decision and is appropriate only if the final decision is:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the commission;

- (3) In violation of a commission rule;
- (4) Made upon unlawful procedure;
- (5) Affected by other error of law;
- (6) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (7) Unreasonable, arbitrary, or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Within 30 days from the filing of the application for rehearing the commission shall set a hearing date on the application, or shall enter an order without a hearing, or shall grant or deny the application. If the applicant is granted a rehearing, the commission will schedule a rehearing as soon as practicable. If the commission does not enter an order within 30 days from the filing of the application for rehearing, the application shall be deemed to be denied.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 13; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 13; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1988, No. 88-214, p. 315, § 3; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

§ 34-27-38. Disciplinary action--Appeals.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) Findings of the commission are final unless within 30 days after the date of the commission's final order, the applicant or accused files a notice of appeal in the Circuit Court of Montgomery County, or of the county of his residence, if an Alabama resident; or, if a corporation registered in Alabama, in the circuit court of the county of registration or the county in which the corporation has its principal place of business in Alabama. A party appealing a decision shall post a \$200.00 appeal bond with the clerk of the circuit court. The circuit clerk shall notify the commission of the appeal after the clerk has approved the appellant's bond.

(b) An appeal does not act as supersedeas, but the decision of the commission may be stayed by the court pending such appeal.

(c) The commission shall within 30 days of service of the notice of appeal, or within such additional time as the court may allow, file the record in the case with the circuit clerk. A complaint setting forth with particularity the issues raised on appeal shall be filed with the court and served on the commission by the appealing party within 30 days after the notice of appeal is filed. Thereafter the action shall be conducted in accordance with the Alabama Rules of Civil Procedure.

(d) The appeal shall be conducted by the court without a jury and shall be confined to the record. The commission's decision shall be taken as prima facie just and reasonable and the court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact. The court shall affirm or reverse, in part or in whole, or modify the commission decision or remand the case to the commission for further proceedings.

If the commission decision is affirmed in whole or in part, the cost of the appeal shall be taxed against the party taking the appeal. If the decision of the commission is not affirmed, the court shall tax the costs of appeal against the commission.

CREDIT(S)

(Acts 1951, No. 422, p. 745, § 14; Acts 1963, No. 290, p. 734, § 1; Acts 1971, No. 2485, p. 3966, § 14; Acts 1971, 3rd Ex. Sess., No. 310, p. 4599, § 1; Acts 1975, No. 563, p. 1276, § 1; Acts 1978, No. 654, p. 932, § 1; Acts 1983, No. 83-516, p. 781, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

ARTICLE 3. . VACATION TIME-SHARING PLANS.

§ 34-27-50. Definitions.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

For the purposes of this article, the following terms shall have the meaning respectively ascribed to them by this section:

- (1) Accommodations. Any hotel or motel room, condominium, or cooperative unit, cabin, lodge, apartment or any other private or commercial structure designed for occupancy by one or more individuals or any recreational vehicle campsite or campground.
- (2) Business entity. Any individual, corporation, firm, association, joint venture, partnership, trust, estate, business trust, syndicate, fiduciary, and any other group or combination which engages in acts or practices in any trade or commerce.
- (3) Contract. Any contract, promissory note, credit agreement, negotiable instrument, lease, use agreement, license, security or other muniment conferring on the purchaser the rights, benefits and obligations of a vacation time-sharing plan.
- (4) Commission. The Alabama Real Estate Commission.
- (5) Commissioner. A member of the Alabama Real Estate Commission.
- (6) Facilities. Any structure, service or property whether improved or unimproved made available to the purchaser for recreational, social, family or personal use.
- (7) Seller. Any owner of a vacation time-sharing plan or any business entity, including but not limited to an agent, dealer, distributor, franchiser, subsidiary, assignee, reseller, broker or any other representative thereof who, for a fee, commission or other valuable consideration, negotiates or attempts to negotiate the listing, sale, auction, purchase, exchange or lease of any real estate or the improvements thereon or collects rents or attempts to collect rents, or who advertises or holds himself out as engaged in any of the foregoing activities. Provided however, that the provisions of this article shall not be applicable to:
 - a. The resale of a vacation time-sharing unit week by the owner of such unit week, when the seller owns no more than four such unit weeks within the respective vacation time-sharing plan. Provided however, that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period.
 - b. Agencies and instrumentalities of the state or federal government nor to employees of any lender or public officials making appraisals for federal, state or local units of government, nor to anyone making appraisals through such employees for lending or governmental purposes; and provided further, that the sales licensure provisions of this article shall not be applicable to the sale or leasing of real estate by anyone who owns a fee simple interest of at least 10 percent therein, or to the attorney-at-law of such owner acting within the scope of his duties as an attorney-at-law. Ownership of stock in a corporation is not ownership of an interest in real estate owned by the corporation and does not exempt such stockholder from any provision of this article unless the stockholder owns or controls at least 10 percent of the stock of the corporation. This provision exempts owners from only the sales licensure requirements of this article. All other requirements of sellers under this article shall apply to owners of vacation time-sharing plans.
- (8) Vacation time-sharing ownership plan. Any arrangement, plan, or similar device, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time-sharing unit, whereby the purchaser receives an undivided fee simple ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

(9) Vacation time-sharing lease plan. Any arrangement, plan, or similar device, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year. Such lease plans shall not include an arrangement or agreement whereby a purchaser in exchange for an advance fee and yearly dues is entitled to select from a designated list of facilities located in more than one state accommodations, of companies which operate in at least nine states in the United States through franchises or ownership, for a specified time period and at reduced rates and under which no interest in real property is transferred.

(10) Vacation time-sharing plan. Either a vacation time-sharing ownership plan or a vacation time-sharing lease plan as defined herein.

(11) Time-sharing unit. The actual accommodations and related facilities which are the subject of the vacation time-sharing ownership plan or lease plan.

(12) Substantially complete. All structural components and mechanical systems of all buildings containing or comprising any time-sharing unit, facilities, or accommodations are finished in accordance with the plans or specifications of the project as evidenced by a recorded certificate of completion executed by an independent registered surveyor, architect or engineer.

(13) Unit week or interval. A number of consecutive days, normally seven consecutive days in duration, which may reasonably be assigned to purchasers of vacation time-sharing plans by the sellers.

(14) Receivable. Any note, contract, promise or any other agreement to pay a fixed or determinable amount of money which, for the purposes of this article, shall not be in arrears for more than 90 days.

(15) Escrow agent. A federally insured financial institution doing business in this state or a bonded trust agent bonded in at least the amount of the trust; provided, however, that nothing contained in this article shall operate to prevent investment of funds escrowed pursuant to this article by the bank, trust company or bonded agent and to pay all interest and dividends to the seller of vacation time-sharing plans.

(16) Escrow account. Any funds held or maintained by an escrow agent.

(17) Vacation time-sharing sales license. A license issued by the commission authorizing individuals to act as sellers of vacation time-sharing plans.

(18) Licensee. A person having a vacation time-sharing sales license.

(19) Exchange company. Any person or business entity owning and/or operating an exchange program.

(20) Exchange program. Any arrangement allowing owners to exchange occupancy rights with persons owning other timeshares; provided, however, that an exchange program shall not exist if all of the occupancy rights which may be exchanged are in the same time-share property.

(21) Managing agent. Any person engaged by the owners association to manage the time-share plan and the time-share property.

(22) Qualifying broker. A person who is licensed by the commission as a real estate broker as well as a seller of vacation time-sharing plans and who serves in a supervisory capacity to all other licensees acting in the name of the vacation time-sharing plan which the qualifying broker represents.

(23) Time-sharing project. All the real property contained as part of a vacation time-sharing plan.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 1; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-51. Acts constituting violation of article--Sell, etc.; without license; failure to provide certain documents at time of registration; failure to follow rules of advertising.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for any seller of vacation time-sharing plans to:

(1) Sell, lease, encumber or convey in any manner or to solicit or advertise such transactions unless the seller has been duly licensed under the provisions of Section 34-27-66 and unless the vacation time-sharing plan and the units thereby affected have first been registered with the commission. Provided, however, that the registration requirements of this article shall not apply to nor restrict the listing and resale of any vacation time-sharing plan when:

- a. The vacation time-sharing plan to be resold is within an existing time-sharing facility currently registered with the commission pursuant to the requirements of this article; and
- b. The vacation time-sharing plan to be resold is subject to the identical rules, regulations, conditions or limitations on the use of the accommodations or facilities which affect all other vacation time-sharing plans within that time-sharing facility.

(2) Fail to provide, at the time of registration, to the commission the following materials, or fail to provide any amendments or changes therein made while sales continue:

- a. A copy of the contract by which the rights and obligations of the parties are established.
- b. Copies of promotional brochures, pamphlets, advertisements or other material disseminated to the public in connection with the sale of the vacation time-sharing plan and verbatim scripts of all radio and television advertising in connection therewith.
- c. A statement of the name and type of business entity through which the business of selling vacation time-sharing plans is carried out, including a list of the names and addresses of all of its directors, principal officers, and/or partners, as well as the names and addresses of any sales personnel soliciting in or from the State of Alabama, and the name and address of the business agent for service of process within the State of Alabama.
- d. Copies of all rules, regulations, conditions or limitations on use of the accommodations or facilities available pursuant to the vacation time-sharing plan.
- e. Copies of all liens, mortgages or other encumbrances on the accommodations or facilities which could affect the rights of the purchaser or his assignee, together with the location, date and filing books and page number where such documents are recorded.
- f. A synopsis of any sales presentation made or to be made by the seller to the purchaser over the telephone or other electronic device.
- g. A projected budget of all recurring expenses which may become the responsibility of time-sharing purchasers.
- h. A copy of the public offering statement to be provided to each prospective purchaser.
- i. Evidence that the time-sharing plan owner or his agent shall furnish a surety bond payable to the State of Alabama in the amount of \$100,000.00 with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein shall pay up to \$100,000.00 the aggregate sum of all judgments which may be recovered against the vacation time-sharing plan owner or seller for any actual loss or damage arising against such vacation time-sharing plan owner or seller from the activities of the time-sharing plan owner or seller, or their agents or representatives, related to the time-sharing plan. Such bond must remain in effect for as long as the time-sharing plan shall be registered. In the event such bond is revoked by the surety company, the time-sharing owner shall have 10 days in which to obtain a new bond and file such with the commission. The lack of a bond shall be grounds for the suspension of the registration of the time-sharing plan.

Upon receipt of all items required by this section, the commission shall determine the sufficiency thereof and upon satisfactory compliance with this article, shall issue its order approving their use.

The vacation time-sharing plan shall then be deemed registered. Promotional or advertising material developed after the initial registration of a time-sharing plan may be used without prior approval of the commission provided that such material is in compliance with this article and further provided that it is

submitted to the commission within 10 days after its initial public use.

(3) Fail to include in all advertising of any vacation time-sharing plan a statement which clearly states that the seller is offering a time-sharing interest.

(4) Fail to include in all advertising of any vacation time-sharing plan which offers a time-sharing interest of less than fee simple a statement which clearly states that the interest being offered is less than a fee simple ownership interest.

(5) Effective October 1, 1985, fail to provide each prospective purchaser a public offering statement in such form and under such terms as shall be required by commission rules and regulations.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 2; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-52. Acts constituting violation of article--Failure to keep certain items among business records.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for any owner or business entity offering vacation time-sharing plans for sale to the public to fail to keep among its business records the following:

(1) A copy of each item required to be submitted to the commission under Section 34-27-51.

(2) A copy of the contract from each sale of the vacation time-sharing plan, which contract shall be retained for a period of at least three years after parties to the vacation time-sharing plan have completely performed all of their obligations thereunder.

(3) A list of all employees and independent contractors involved in the development, sale, or advertising of the vacation time-sharing plan or plans, including their last known mailing addresses, which list shall include all current employees and all previous employees whose employment has been terminated within the preceding 36 months.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 3; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-53. Acts constituting violation of article--Failure to utilize, etc., fully completed copy of contract.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for the seller of a vacation time-sharing plan to fail to utilize and furnish the buyer with a fully completed copy of a contract pertaining to such sale at the time of its execution which shall include:

(1) The actual date the contract is signed by all parties.

(2) The name and address of the seller.

(3) In immediate proximity to the space reserved in the contract for the signature of the buyer and in no smaller type than contained in the body of the contract:

a. In the case of a vacation time-sharing lease plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not including Sunday if that is the fifth day, from the above date. You may also cancel this contract at any time in case the accommodations or facilities are no longer available as provided in the contract. If you decide to cancel, you must notify the seller in writing of your intent to cancel by sending notice to (name of seller) by certified mail, return receipt requested at (seller's address)."

b. In the case of a vacation time-sharing ownership plan, the following statement:

"You may cancel this contract without penalty or obligation within five days, not

including Sunday if that is the fifth day, from the above date, by notifying the seller in writing of your intent to cancel, sending his notice thereof by certified mail, return receipt requested."

c. It shall be a violation of this article for the seller of a vacation time-sharing ownership plan to fail to furnish the buyer with an inventory of all furniture, fixtures and appliances which will be located in the accommodation during the time period purchased under a vacation time-sharing ownership plan or at closing.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 4.)

§ 34-27-54. Acts constituting violation of article--Failure, etc., to honor buyer's request to cancel contract.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for the seller of vacation time-sharing plans, or his assignees, to fail or refuse to honor a buyer's request to cancel a contract as provided by Section 34-27-53 if such request is made; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct within a reasonable time the accommodations or facilities if destroyed or damaged; provided that such repair, replacement or reconstruction shall bring such accommodations or facilities back to a state reasonably the same as before the damage or destruction.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 5.)

§ 34-27-55. Acts constituting violation of article--Failure to refund all payments; failure to place all funds in escrow account.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for a seller of vacation time-sharing plans to:

- (1) Fail to refund any and all payments made by the buyer under the contract and return any negotiable instrument, other than checks, executed by the buyer in connection with the contract or services within 20 days after receipt of notice of cancellation made pursuant to Section 34-27-53, if the buyer has not received any benefits pursuant to the contract.
- (2) If the buyer has received any benefits pursuant to the contract, fail to refund within 30 days after receipt of notification of cancellation made pursuant to Section 34-27-53 or Section 34-27-54 any and all payments made by the buyer to the seller which exceed a pro rata portion of the total price, taking into consideration the cost of use of the time-share facilities at an average rental rate per unit for all time-share units, representing the proportion of any contract benefits actually received by the buyer during the time preceding cancellation.
- (3) Fail to place in an escrow account 100 percent of the funds received from the purchasers of such plans, where the seller of the time-sharing plan transfers an interest herein to the purchaser, which escrow account shall provide that:
 - a. Its purpose is to protect the buyer's right to refund during the five day right to cancellation period provided in Section 34-27-53 or Section 34-27-54, and
 - b. Funds may be withdrawn by the seller upon transfer to the buyer after expiration of the respective cancellation period provided in such Sections 34-27-53 and 34-27-54.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 6; Acts 1984, No. 84-259, p. 431, § 1.)

§ 34-27-56. Acts constituting violation of article--Misrepresentation.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for any seller of vacation time-sharing plans, or his assignees, to misrepresent in any manner the buyer's right to cancel provided by this article.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 7.)

§ 34-27-57. Acts constituting violation of article--Sell, etc., interest in plan to third person that substantially affects rights of other owners.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) It shall be a violation of this article for any seller of vacation time-sharing plans to sell, lease, assign or otherwise transfer the seller's interest in the vacation time-sharing plan or the accommodations or facilities to a third party when such a sale, lease, assignment or other transfer substantially affects the rights of other owners or lessees of the time-share units, unless:

The third party agrees in writing to:

- a. Fully honor the rights of purchasers of the vacation time-sharing plan to occupy and use the accommodations or facilities; and
- b. Fully honor rights of purchasers of the vacation time-sharing plan to cancel their contracts and receive an appropriate refund as provided in this article; and
- c. Comply with the provisions of this article for as long as the third party continues to sell the vacation time-sharing plan, or for as long as purchasers of the vacation time-sharing plan are entitled to occupy the accommodations or use the facilities, whichever is longer in time; and

(2) The commission receives prior written notice of the intent to transfer the seller's interest; and

(3) Written notice is given to each purchaser of a vacation time-sharing plan affected thereby, by certified mail within 30 days of the transfer.

(b) The commission shall reserve the right to demand such additional information regarding the transfer as is reasonably necessary to determine to what extent the rights of other owners of units or unit weeks within the subject time-sharing plan shall be affected and to determine whether the registration of the plan should continue, should be amended, or should be suspended or revoked.

(c) The provisions of this section shall not be construed to apply to the sale of a single unit or to prevent the seller's right to sell, discount, or hypothecate for value receivables in favor of any bank, mortgage company, or other lending institution and such transactions shall be exempt from the requirements of the section.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 8; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-58. Acts constituting violation of article--Failure to place 50 percent of cash, etc., received in escrow; failure to provide liability insurance, etc.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) It shall be a violation of this article for a seller of vacation time-sharing lease plans to fail to:

(1) Place in escrow 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

- a. The purpose of such escrow account is to protect the purchaser's right to a refund if at any time the accommodations and facilities are no longer available as provided in the contract; provided however, nothing contained in this section shall operate to deny the seller the option to repair, replace or reconstruct, within a reasonable time, the

accommodations or facilities, if destroyed or damaged.

b. The purchaser shall be entitled to a refund from the escrow account upon the conditions described above in an amount which represents the buyer's pro rata share of the moneys therein.

c. Funds may be withdrawn by the seller from the escrow account in the ratio of the amount of remaining time available for use by the purchaser of the vacation time-sharing lease plan in relation to the total time available to the purchaser at the time of purchase.

d. The escrow agent shall release or dispense funds from the escrow account to the seller of a vacation time-sharing lease plan only upon receipt of a sworn statement from the seller that the accommodations and facilities have been available for use by the purchaser according to the terms of the purchaser's contract.

(2) In lieu of the escrow account provided in subdivision (1), a seller of vacation time-sharing lease plans may:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities or accommodations. Should net income from such escrowed receivables be insufficient to pay all liens or encumbrances as aforesaid, the escrow agent shall so notify the seller in writing, and the seller shall within 15 days after notice pay unto the escrow agent the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2) a of subsection (a) of this section.

(3) Provide the purchaser with liability and property insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes, and assessments levied against the accommodations and facilities; or, in the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance repairs and management fees.

(4) Provide the purchaser with an instrument, in recordable form, which provides notice to all subsequent creditors of the seller of the existence of the vacation time-sharing plan rights of the purchaser. Such instrument shall be provided to the purchaser by the seller at the time of signing of the contract. When recorded, such instrument shall serve to protect the purchaser's interest in the seller's accommodations from any claims by subsequent creditors of the seller.

(5) Provide a document which explains the content, purpose and protection afforded to the purchaser by the documents described in subdivision (4) along with the procedure necessary to follow in order to secure to the purchaser the rights and protections which such documents provide.

(b) It shall be a violation of this article for a seller of vacation time-sharing ownership plans to fail to:

(1) Deposit with an escrow agent no less than 50 percent of the cash and receivables received from the purchasers of such plans, such receivables to be assessed at net principal value.

a. The purpose of the escrow account required hereunder is to protect the purchaser's ownership interest in the accommodations or facilities and to provide funds from which periodic payments can be made to retire any outstanding indebtedness on the time-sharing facilities or accommodations.

b. The escrow agent shall release or dispense to the seller of the vacation time-sharing ownership plan funds from the escrow account, at least quarterly but not more frequently than monthly, in an amount which shall not exceed 100 percent of the sum of all accrued indebtedness secured by the time-sharing accommodations or facilities which funds shall be used by the seller solely for the retirement of that indebtedness.

c. Prior to the release or dispensing of such escrow funds, the seller shall furnish the escrow agent with a sworn statement which reveals by category the total amount of all liens or indebtedness secured by the time-sharing accommodations or facilities, the amount of indebtedness anticipated during the next succeeding reporting period and the amount of any deficit or surplus accruing from the preceding reporting period.

(2) In lieu of the escrow account provided in subdivision (1) of this subsection (b), a seller of vacation time-sharing ownership plans may alternatively:

a. Assign to an escrow agent receivables, the income from which shall be adequate to pay all liens or encumbrances secured by the time-sharing facilities and accommodations.

Should net income from such escrowed receivables be insufficient to pay all recurring debts as aforesaid, the escrow agent shall so notify the seller in writing and the seller shall within 15 days after notice pay into the escrow account the amount of such deficit.

b. Sell, hypothecate or discount receivables, the proceeds from which shall be deposited with an escrow agent and administered in the manner prescribed by paragraph (2)a of this subsection (b).

(3) Provide the purchaser with liability and casualty insurance at the seller's expense for the accommodations and facilities to be used by the vacation time-sharing lease plan purchaser in an amount equal to the replacement cost of such accommodations and facilities, or the maximum amount of insurance available on the accommodations and facilities, according to generally accepted underwriting principles for similar properties in the same area, and to deposit with an escrow agent, annually, sufficient funds for the payment of all insurance premiums, taxes and assessments levied against the accommodations and facilities. In the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including insurance premiums, taxes, assessments, maintenance, repairs and management fees.

(c) Any escrow account kept pursuant to this section may be discontinued when all liens or encumbrances on the subject of time-sharing accommodations and facilities have been fully discharged. When the value of the escrow account equals the sum of all mortgages, liens and indebtedness on the project secured by project property, the seller may reduce his payments into the escrow account to monthly amounts which will maintain the value of the escrow account at an amount equal to the total obligation represented by all mortgages, liens and indebtedness.

(d) The commission may at its discretion waive the requirement for a time-share plan to maintain an escrow account pursuant to this section upon proof satisfactory to the commission that the unit weeks being sold or leased through the respective time-sharing plan are being released from all liens or encumbrances at, or prior to, the time of the sale or lease.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 9; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-59. Acts constituting violation of article--Failure to disclose total financial obligation, etc., in contract.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this section for any seller of vacation time-sharing plans to fail to fully

disclose in the contract in boldface type of a size no smaller than any other type used in the body of the contract to purchaser:

- (1) The total financial obligation of the purchaser, which shall include the initial purchase price and any additional charges to which the purchaser may be subject.
- (2) Any individual or business entity which has or may have the right to alter, amend or add to charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed.
- (3) The nature and duration of each agreement between the business offering the vacation time-sharing plans for sale and the individual or business entity managing the accommodations or other facilities.
- (4) In immediate proximity to the space reserved in the contract for the signature of the buyer and in boldface type of the same size as required by subdivision (3) of Section 34-27-53 a statement as follows:

"No purchaser should rely upon representations other than those included in the contract."
However, inclusion of this statement shall not impair the purchaser's right to bring any legal action based upon any cause of action arising from oral statements.
- (5) The date of availability of each amenity of the offered accommodations and facilities when they are not completed at the time of sale of such plan.
- (6) The specific term of the contract.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 10.)

§ 34-27-60. Acts constituting violation of article--Misrepresentation; waiver of rights of purchasers; sale, etc., without license; bad checks.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

It shall be a violation of this article for any seller of vacation time-sharing plans to:

- (1) Use any promotional device, including but not limited to sweepstakes, lodging certificates, gift awards, premiums, or discounts, without fully disclosing that such promotional devices are being used for the purpose of soliciting the sale of vacation time-sharing plans and without fully disclosing the fair market value of each award or prize offered and the approximate odds of receiving each award or prize offered.
- (2) Use any promotional device as set forth above to obtain the names and addresses of prospective purchasers without fully and prominently disclosing that names and addresses so acquired will be used for the purpose of soliciting the sale of the vacation time-sharing plans.
- (3) Misrepresent the amount of time or period of time the accommodations and facilities will be available to any purchaser.
- (4) Misrepresent or deceptively represent the location of the offered accommodations and facilities.
- (5) Misrepresent the size, nature, extent, qualities or characteristics of the offered accommodations and facilities.
- (6) Misrepresent the nature or extent of any services incident to the accommodations and facilities.
- (7) Make any misleading or deceptive representations with respect to the contents of the contract or the buyer's rights, privileges or benefits thereunder.
- (8) Fail to honor and comply with all provisions of the contract with the purchaser.
- (9) Misrepresent the conditions under which a customer may exchange his rights to an accommodation in one location for rights to an accommodation in another location.

(10) Include in any contract any provision purporting to waive any right or benefit provided for purchasers under this article, or to seek or solicit such a waiver.

(11) Do any other act which constitutes fraud, misrepresentation or failure to make a disclosure of a material fact.

(12) Perform any act for which a vacation time-sharing license is required unless the seller is either exempted from the license requirement, a duly authorized and licensed qualifying broker, or a duly licensed seller acting under the sponsorship and supervision of a qualifying broker.

(13) Allow an unlicensed person who is engaged or employed by him or who is under his control or supervision to perform any act for which a time-sharing sales license is required.

(14) Present to the Alabama Real Estate Commission, as payment for a fee or fine, a check that is returned due to there being insufficient funds in the account upon which it was drawn or due to such account being closed or not in existence.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 11; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-61. Hearing; refusal, suspension or revocation of license; willful violation defined; escrow deficiency.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

The commission may upon its own motion, or upon the verified complaint in writing of any person, hold a hearing regarding an alleged violation by any person or business entity of this article. Any person found guilty of having violated any provision of this article or any rule, regulation or order of the commission shall be subject to the refusal of a license, if not licensed; or, if licensed, to the suspension or revocation of such license and/or a monetary penalty of not less than \$25.00 nor more than \$1,000.00.

Such hearing shall be held in a manner prescribed by the Alabama Real Estate License Law and the rules and regulations of the Alabama Real Estate Commission. The reinstatement of a license suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

The penalties and procedures outlined in this section shall not be construed to supersede or conflict with penalties and procedures outlined in other sections of this article.

Provided, that a deficiency in an escrow account required by this article, which results solely from the cancellation or worthlessness of receivables previously placed in escrow, shall not be considered a violation of this article. In the event of an escrow deficiency, a lender who has advanced funds to a project shall have no liability to contribute funds to the escrow to cure the deficiency, and the lender's lien on the property shall not be affected by the deficiency.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 12; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-62. Enforcement and implementation of article; acts constituting misdemeanors; voidability of sales of unregistered plans, etc.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) The Alabama Real Estate Commission shall be responsible for the enforcement and implementation of this article, and the Attorney General of the State of Alabama, or the district attorney of any county of the State of Alabama upon request by the commission, shall assist the commission in the enforcement of this article and the prosecution of violations hereunder. The provisions of this article shall not be construed to limit in any manner the right of any party to bring a

private action to enforce the provisions of this article. In addition to the administrative enforcement of this article by the commission, the following shall be Class A misdemeanors triable in the courts of Alabama:

(1) It shall be a Class A misdemeanor for any person, natural or legal, while within the borders of the State of Alabama, to participate in the sale or attempted sale of any time-share plan unless licensed to do so by the commission or exempted from such licensure by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(2) It shall be a Class A misdemeanor for any person, natural or legal, to or attempt to, sell, lease or otherwise market any interest in any vacation time-sharing plan not registered with the commission as a vacation time-sharing plan or exempted from such registration by the laws of the State of Alabama or the United States, regardless of whether the vacation time-sharing plan is itself located within the State of Alabama.

(b) Any time-sharing sale made in Alabama between a time-share purchaser and a seller for the purchase or lease of a time-share week or weeks in a vacation time-share plan which is not registered with the commission, or whose registration is under suspension, or which is under an order from the commission to cease and desist from sales, shall be voidable by the purchaser. An action to void such a transaction must be brought by the purchaser within three years of the date of the making of the lease or sales agreement. In any such action, the prevailing party may be awarded reasonable attorney fees as determined by the court.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 13; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-63. Filing of plan relating to units not substantially completed requires filing of additional documents.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

If a seller files with the commission any vacation time-sharing plan or any amendment thereto which describes or concerns time-sharing units, accommodations or facilities not substantially completed, the seller shall file with the commission the following:

(1) A notarized statement showing all costs involved in completing each phase of the project.

(2) A notarized statement of the time of completion of construction of each phase of the project.

(3) Satisfactory evidence of sufficient funds to cover all costs to complete the project.

(4) A copy of the executed construction contract and any other contracts for the completion of the project.

(5) A 100 percent payment performance bond payable to the State of Alabama from a surety company authorized to do business in Alabama, covering the entire cost of construction necessary to complete the project.

(6) If purchasers' funds are to be used in the construction of the project, an executed copy of the escrow agreement with an escrow company or financial institution authorized to do business with the state, which provides that:

a. Disbursements of purchasers' funds may be made from time to time to pay for construction of the project; architectural, engineering, finance, and legal fees; and other costs for the completion of the project in proportion to the value of the work completed by the contractor as certified by a registered surveyor, architect, or engineer on bills submitted and approved by the lender of construction funds or the escrow agent;

b. Disbursements of the balance of purchasers' funds remaining after completion of the

project may be made only after either the escrow agent or lender receives satisfactory evidence that the period for filing mechanics' and materialmen's liens has expired, or the right to claim those liens has been waived or other adequate provision has been made for satisfaction of any claimed mechanics' or materialmen's lien; and

c. Any other restrictions relative to the retention and disbursement of purchasers' funds required under the rules of the commission have been met; and

d. Any other materials or information required under the rules of the commission have been provided.

(7) The commission shall not register or issue any order approving any vacation time-sharing plan unless the commission determines, on the basis of materials submitted by the developer, that the time-sharing units, accommodations, or facilities or any additions thereto will be completed.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 14; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-64. Registration fees; assessment of costs of investigating violation of article.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located within the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). In addition to submitting an annual renewal fee, each time-sharing plan must submit an audited annual financial statement of the entity or person in whose name the plan is registered done by a certified public accountant and such other materials as the commission shall require for an annual registration renewal. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(b) For the registration of all vacation time-sharing plans and the accommodations and facilities affected thereby which are located outside the state, there shall be paid to the commission the initial sum of seven hundred fifty dollars (\$750), together with an annual renewal fee of seven hundred fifty dollars (\$750). All books, files, accounts and other documents pertaining to the advertisement and sale of vacation time-sharing plans located outside the state shall be subject to examination by the commission and the business entity whose documentation is being examined shall pay a fee of five hundred dollars (\$500) plus the actual expenses, including the cost of transportation, of the examiner representing the commission while he is absent from this office for purposes of conducting the examination. For amendments or changes to each sales promotion including brochures, pamphlets, advertisements, or other materials disseminated to the public required pursuant to subdivision (2) of Section 34-27-51, there shall be paid a fee of twenty dollars (\$20) at the time of submission to the commission for approval.

(c) If the commission determines that the registration or operation of any vacation time-sharing plan violates the provisions of this article in such manner as indicates bad faith or dishonesty, the commission, after notice and hearing, may assess all reasonable costs of the investigation and prosecution of such violations.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 15; Acts 1985, No. 85-750, p. 1204, § 1; Act 2001-310, p. 391, § 1.)

§ 34-27-65. Proceeds from sale, etc., of lease plan exempt from Transient Occupancy Tax.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

The proceeds from the sale or resale of any vacation time-sharing lease plan shall be exempt from the Transient Occupancy Tax imposed by Section 40-26-1.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 16.)

§ 34-27-66. Examination and license requirements; issuance and renewal of license; inactive status; change of address.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) Any person desiring to act as a seller of vacation time-sharing plans shall file with the commission a written application upon such form as the commission shall designate and shall pass to the satisfaction of the commission the examination hereinafter prescribed.

(b) Prerequisites for taking the vacation time-sharing sales examination are as follows:

(1) Evidence satisfactory to the commission that the applicant bears a good reputation for honesty and truthfulness.

(2) The applicant should not have been convicted of any criminal offense involving moral turpitude or of any felony in this or any other state.

(3) The applicant shall be at least 19 years of age.

(4) The applicant shall be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government, or shall possess a certification of lawful permanent residence issued by the United States government.

(c) The commission shall prepare and conduct an examination on the fundamentals of this article and related topics and shall schedule such examination at least quarterly. No applicant shall be entitled to examination unless all prerequisites enumerated above have been met as determined by the commission. The minimum passing grade shall be 70 percent.

(d) Every applicant shall pay the sum of seventy-five dollars (\$75) for each examination taken. Should an applicant be scheduled and issued a permit for an examination and fail to appear, the entire amount of the examination fee shall be forfeited. Liability for forfeiture occurs at the time the examination permit is issued. The applicant shall be allowed up to 60 days after notice of passing the examination to either be designated as a qualifying broker or to secure a qualifying broker under whom to be licensed. In the alternative, the applicant may place his or her license on inactive status with the commission within the allotted 60-day period. Every applicant shall also pay a license fee of fifty dollars (\$50) upon successful completion of the examination, provided he or she submits the license fee along with appropriate documentation to the commission within the allotted 60-day period. The 60-day period shall begin on the date which the results of the applicant's examination are made available to the applicant. The results shall be mailed from the commission office, and the applicant shall be considered to have received such notification three days from the date of mailing. Should an applicant not become licensed within 60 days after receiving notification of his or her having passed the examination, he or she shall be required to again meet the requirements of an original applicant before becoming licensed, including the taking and passing of the examination. The commission may contract with any outside source to prepare and conduct vacation time-sharing sales examinations in its behalf and to pay for the reasonable cost thereof from the examination fees collected.

(e) Vacation time-sharing sales licenses are due to be renewed annually on or before August 31, on a form prescribed by the commission. September 30 shall be the annual expiration date for such licenses. Any license renewed after August 31 and prior to January 1 of the following year shall be subject to a penalty fee of fifteen dollars (\$15) in addition to the annual license fee of fifty dollars

(\$50). On January 1 of the year following the expiration of a vacation time-sharing sales license, the license may no longer be renewed, and the former license holder shall be required to again meet the requirements of an original applicant before again becoming licensed, including the taking and passing of the license examination. Upon submission of a renewal request in such form as the commission shall prescribe and payment of a fifty dollar (\$50) renewal fee, the commission shall issue the appropriate license.

(f) The qualifying broker for a vacation time-sharing plan shall meet all the general requirements for a time-sharing sales license and shall have a current, active real estate broker's license issued under the Alabama Real Estate License Law as well as a time-sharing sales license. If the qualifying broker is not licensed on active status with a real estate company, he or she may place his or her real estate broker's license on active status in the name of the time-sharing plan.

(g) Each qualifying broker shall supervise each seller licensed under him or her and insure that every seller licensed under him or her, as well as the vacation time-sharing plan for which he or she is the qualifying broker, complies with this chapter, and the broker shall be responsible to any injured party for actual damages caused to such party by any violation of this chapter by any vacation time-sharing plan or seller for whom he or she is acting as qualifying broker.

(h) There shall be a license transfer fee of fifty dollars (\$50) for any of the following: A change of qualifying broker; a change of name or address of the vacation time-sharing plan; a change of name of a licensee; a change of employment by a licensee; or the activation of an inactive license.

(i) A representative of the vacation time-sharing plan authorized to do so may designate an office located off the site of the time-sharing project as a branch sales office of the vacation time-sharing plan provided that a qualifying broker is designated for each such branch sales office.

(j) A real estate company licensed by the commission may act as an agent for the purpose of reselling time-shares for persons who each own no more than four unit weeks of a given time-sharing plan provided that the contract for such resale shall meet all the requirements of a contract for the initial sale of a vacation time-sharing interest, including the nonwaivable right of the purchaser to cancel the contract within the specified five-day period; and further provided that the qualifying broker for such real estate company be licensed as a time-share seller by the commission and that any sales agent of the company who participates in the sale of time-shares be licensed by the commission as a time-share seller.

(k) No applicant to be a seller of vacation time-sharing plans shall be issued a license by the commission unless the applicant is designated as a qualifying broker by a representative of a vacation time-sharing plan or real estate company authorized to make such a designation, or unless the applicant is sponsored by a duly authorized qualifying broker who has signed a written statement accepting sponsorship of the applicant, or unless the applicant has his or her license issued on inactive status and maintained at the office of the commission.

(l) No vacation time-sharing licensee shall perform any of the acts authorized by such license until the license certificate is in his or her actual possession, if the licensee is a qualifying broker, or in the possession of his or her sponsoring broker, if the licensee is not a qualifying broker.

(m) A licensee may place his or her license on inactive status with the commission for a period of up to 24 consecutive months and may renew his or her license while it is on inactive status. No license which is on inactive status shall be reactivated without the commission receiving evidence that the licensee's surety bond is in effect. Any license which has been on inactive status for longer than 24 consecutive months shall automatically expire as of the day following the 24-month period.

(n) Each licensee shall notify the commission of any change of address, business or residential, within 30 days of such change.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 17; Acts 1984, No. 84-282, p. 472, § 1; Acts 1985, No. 85-750, p. 1204, § 1; Acts 1986, No. 86-375, p. 560, § 1; Acts 1989, No. 89-284, p. 447, § 3; Act 2008-141, p.

§ 34-27-67. Registration required of every plan offered for sale.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

Every vacation time-sharing plan for sale or offered for sale in this state shall be registered with the Alabama Real Estate Commission as follows:

(1) Upon receipt of an application for registration in the required form, the commission shall forthwith initiate an examination to determine that:

- a. The seller may convey or cause to be conveyed the vacation time-sharing plan offered for sale if the purchaser complies with the terms of the offer.
- b. The advertising material and general promotional plan are not false or misleading as determined by the commission.
- c. The requirements of this article and the rules of the commission have been fulfilled.
- d. The seller has not, or, if a corporation, its officers, directors, and principals have not been convicted of any crime involving land dispositions, any crime of moral turpitude, any securities law violation, fraudulent business activity, or any aspect of the vacation time-sharing business in this state, the United States, or any other state or foreign country within the 10 years immediately preceding the date of application, and has not been subject to any injunction or administrative order within the preceding 10 years involving any of the activities above.

(2) Upon receipt of the application for registration in required form, the commission shall issue a notice of filing to the applicant. If within 45 days from the date of the notice of filing, the commission affirmatively determines upon inquiry and examination that the requirements of this article have been met, the commission shall enter an order registering the vacation time-sharing plan or rejecting the registration. If no order of rejection is entered within 45 days from the date of notice of filing, the vacation time-sharing plan shall be deemed registered unless the applicant has consented in writing to a delay. No reasonable request for an extension of time by the commission shall be withheld; provided that if the commission determines upon inquiry and examination that any of the requirements of this article have not been met, the commission shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days. If the requirements are not met within the time allowed, the commission shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for 20 days during which time the applicant may petition for reconsideration and shall be entitled to a hearing.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 18; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-68. Commission may seek injunctive relief, etc., for violation of article; investigation; revocation of registration.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) If it appears that a person, firm, corporation, or any business entity has engaged, or is about to engage, in an act or practice constituting a violation of a provision of this article or rule or order of the commission, the commission, through the Attorney General, may institute legal actions to enjoin the act or practice and to enforce compliance with this article or any rule or order of the commission or to have a receiver or conservator appointed. To prevail in such action, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage

would result from the continued violation thereof.

(b) The commission may:

(1) Make any public or private investigation which it deems necessary, either within or outside of this state, to determine whether any person has violated or is about to violate this article or any rule or order hereunder, or to aid in the enforcement of this article or in the prescribing of rules and forms hereunder.

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the commission may determine, as to all facts and circumstances concerning the matter to be investigated.

(3) For the purpose of any investigation or proceeding hereunder, the commission or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts of any other matter reasonably calculated to lead to the discovery of material evidence.

(4) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected hereby, the commission, through the Attorney General may apply to the circuit court for an order compelling compliance.

(5) Issue an order requiring the seller to cease and desist from any unlawful practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this article, if, after notice and hearing, the commission determines that a seller has violated any provisions of this article.

(6) Make findings of fact in writing that the public interest may be harmed by delay in issuing an order and in such case may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the commission, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a cease and desist order to the seller. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

(7) Revoke or suspend the registration of a vacation time-sharing plan if, after notice and hearing, upon a written finding of fact, it determines that the seller or sellers in whose name the plan is registered, or any agent therefor, has:

- a. Failed to comply with the terms of any order of the commission; or
- b. Been convicted in any court of competent jurisdiction subsequent to filing of the application for registration, of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing; or
- c. Had a final judgment rendered against him in any court of competent jurisdiction, when such judgment involved the sale, marketing or operation of any time-share plan or real estate transaction; or
- d. Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of vacation time-sharing plan purchasers; or
- e. Failed to faithfully perform any stipulation or agreement made with the commission as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or advertisement; or
- f. Made an intentional misrepresentation or concealed a material fact in an application for registration; or
- g. Made a misrepresentation or concealed any material fact in the sale, marketing or operation of a registered time-sharing plan; or
- h. Failed to comply with the terms of a sales contract; or

- i. Failed to make timely delivery of a deed to any purchaser to whom a deed is due to be delivered; or
- j. Violated any other provision of this article or any rule or regulation of the commission.

The reinstatement of a registration suspended or revoked as a result of a violation under this article may be made conditional upon the fulfillment of such reasonable conditions as are imposed by the commission.

(8) Issue a cease and desist order instead of revoking a registration if it finds, after notice and hearing, that the seller has been guilty of a violation for which revocation could be ordered.

(9) In lieu of, or in addition to, revoking or suspending a registration or issuing a cease and desist order, impose a penalty of not less than \$100.00 nor more than \$2,000.00 per violation upon the seller(s) in whose name(s) the plan is registered if it finds, after notice and hearing, that such seller(s), or any agent therefor, has been guilty of a violation for which revocation or suspension could be ordered.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 19; Acts 1985, No. 85-750, p. 1204, § 1.)

§ 34-27-69. Surety bond; suspension, etc., of license for violation of article; reinstatement; relicensure; board must be notified of initiation, etc., of legal action.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) Every applicant for a license under this article, either original or renewal, shall furnish a surety bond payable to the State of Alabama in the amount of \$5,000.00 if a time-sharing salesman or \$10,000.00 if a broker, with a surety company authorized to do business in Alabama, which bond shall provide that the obligor therein will pay up to \$5,000.00 or \$10,000.00, respectively, the aggregate sum of all judgments which may be recovered against such licensee for actual loss or damage arising from his activities conducted under this article. Said bond shall be filed with the Alabama Real Estate Commission prior to the issuance of such license. A new bond or a renewal or continuation of the original bond shall be required for each licensing period. If a continuous bond is filed with the commission prior to the issuance of such license, no such renewal bond must be filed as long as the continuous bond remains in force and effect. In the event the continuous bond is revoked by the surety company, it shall immediately notify the commission and the licensee shall have 20 days in which to file another bond with the Alabama Real Estate Commission or his license shall be suspended until such new bond is filed.

(b) If at any time a final judgment is rendered against a licensee under this article and the final judgment shall result from or involve any activity covered by this article, the license of the licensee shall be automatically suspended. A judgment shall be considered final when no further relief is available from said judgment in the appellate courts of Alabama. In case of such suspension of license, the commission shall give notice to the licensee that his license is suspended, and said licensee shall deliver this license to the commission for disposition. Upon request by the suspended licensee, the commission will set a date designating a time and place thereon for a hearing on the question of whether the license under suspension should be revoked, whether the suspension should be continued for a designated period or whether the suspension should be continued until terminated by the commission upon the fulfillment of reasonable conditions imposed by the commission. The hearing shall be conducted in accordance with Section 34-27-37 and such appropriate rules and regulations as may be adopted from time to time by the Alabama Real Estate Commission. No licensee under this article whose license hereunder has been revoked may apply for another license hereunder until at least two years after the date of such revocation; and, in the event of such application for reinstatement, he

shall meet all the requirements imposed upon an original applicant for a license under this article; and, furthermore, shall not be relicensed without approval of such relicensing by a majority of the members of the Alabama Real Estate Commission.

(c) Every licensee under this article shall be required to notify the Alabama Real Estate Commission of any civil or criminal action filed or initiated against such licensee within 10 days of the receipt of notice by the licensee of the pending civil or criminal action when the civil or criminal action involves a transaction under this article, or involves the indebtedness of the licensee concerning expenses incurred in the development or continuation of a time-sharing plan, or involves an alleged act of fraud, theft, misrepresentation, embezzlement, or extortion, or involves an alleged felony. The notification shall be in writing and shall include a copy of any civil complaint or other document alleging a complaint or criminal offense; or, if the licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the substance of the civil or criminal action.

(d) Every licensee under this article shall be required to notify the Alabama real estate commission of the outcome of any civil or criminal action of the type described in subsection (c) of this section within 10 days of the notice to the licensee of such outcome. This notification shall be in writing and shall include a copy of any judgment, order or other pertinent document issued by the court having jurisdiction of the matter; or, if licensee is not in possession of such legal documents, the notification shall include a notarized statement by the licensee of the nature of the verdict, settlement, dismissal, or other outcome of the subject civil or criminal action.

CREDIT(S)

(Acts 1983, No. 83-670, p. 1035, § 20.)

ARTICLE 4. . REAL ESTATE CONSUMER'S AGENCY AND DISCLOSURE ACT.

§ 34-27-80. Short title.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

This article shall be known and may be cited as the "Real Estate Consumer's Agency and Disclosure Act."

§ 34-27-81. Definitions.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

As used in this article, the following words shall have the following meanings:

- (1) Agency agreement. A written agreement between a broker and a client which creates a fiduciary relationship between the broker and a principal, who is commonly referred to as a client.
- (2) Broker. Any person licensed as a real estate broker pursuant to Articles 1 and 2 of this chapter.
- (3) Brokerage agreement. A specific written agreement between a brokerage firm and a consumer which establishes a brokerage relationship. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services to be provided.
- (4) Brokerage service. Any service, except for rental or property management services, provided by a broker or licensee to another person and includes all activities for which a real estate license is required under Articles 1 and 2 of this chapter.
- (5) Consumer. A person who obtains information, advice, or services concerning real estate from a real estate licensee.
- (6) Client. A person who has an agency agreement with a broker for brokerage service,

whether he or she be buyer or seller.

(7) Customer. A person who is provided brokerage services by a broker or licensee but who is not a client of the broker.

(8) Dual agency. An agency relationship in which the same brokerage firm represents both the seller and the buyer in the same real estate transaction. Circumstances which establish a dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(9) Informed consent. A consumer's agreement to allow something to happen which is based upon full disclosure of facts needed to choose appropriate brokerage services.

(10) Licensee. Any broker, salesperson, or company.

(11) Limited consensual dual agent. A licensee who, with the written informed consent of all parties to a contemplated real estate transaction, is engaged as an agent for both the buyer and seller. Circumstances which establish dual agency include, but are not limited to, one of the following:

a. When two or more licensees licensed under the same broker each represent a different party to the transaction.

b. When one licensee represents both the buyer and seller in a real estate transaction.

(12) Material fact. A fact that is of significance to a reasonable party which affects the party's decision to enter into a real estate contract.

(13) Qualifying broker. A broker under whom a corporation, partnership, branch office, or lawfully constituted business organization, as the Legislature may from time to time provide, is licensed, or a broker licensed to do business as a sole proprietorship who is responsible for supervising the acts of the company, or proprietorship and all real estate licensees licensed therewith.

(14) Real estate transaction. The purchase, sale, lease and rental, option, or exchange of an interest in real estate.

(15) Single agent. A licensee who is engaged by and represents only one party in a real estate transaction. A single agent includes, but is not limited to, one of the following:

a. Buyer's agent, which means a broker or licensee who is engaged by and represents only the buyer in a real estate transaction.

b. Seller's agent, which means a broker or licensee who is engaged by and represents only the seller in a real estate transaction.

(16) Sub-agent. A licensee who is empowered to act for another broker in performing real estate brokerage tasks for a principal, and who owes the same duties to the principal as the agent of the principal.

(17) Transaction broker. A licensee who assists one or more parties in a contemplated real estate transaction without being an agent or fiduciary or advocate for the interest of that party to a transaction.

CREDIT(S)

(Acts 1995, No. 95-211, p. 341, § 2; Act 98-618, p. 1359, § 1; Act 2008-141, p. 214, § 3.)

§ 34-27-82. Roles and duties of licensees; written disclosure documents; exceptions; brokerage agreements.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) When engaged in any real estate transaction, the licensee may act as a single agent, sub-agent, a limited consensual dual agent, or as a transaction broker.

(b) At the initial contact between a licensee and the consumer and until such time a broker enters into a specific written agreement to establish an agency relationship with one or more of the parties to a transaction, the licensee shall not be considered an agent of that consumer. An agency relationship shall not be assumed, implied, or created without a written bilateral agreement establishing the terms of the agency relationship.

(c) As soon as reasonably possible and before any confidential information is disclosed to any other person by a licensee, the licensee shall provide a written disclosure form to a consumer for signature describing the alternative types of brokerage services, as identified in subsection (a), that are available to clients and customers of real estate brokerage companies. The licensee shall also inform a consumer as to the specific types of brokerage services that are provided by his or her company. A broker shall not be required to offer or engage in any one or in all of the alternative brokerage arrangements specified in subsection (a). The licensee will provide a written form to the consumer for their signature describing the alternative types of brokerage arrangements available. All rental or property management services are excluded from the requirements of this subsection.

(d) A licensee shall not be required to comply with the provisions of subsection (c) when engaged in transactions with any corporation, non-profit corporation, professional corporation, professional association, limited liability company, partnership, any partnership created under the Uniform Partnership Act (commencing at Section 10-8A-101), real estate investment trust, business trust, charitable trust, family trust, or any governmental entity in transactions involving real estate.

(e) After disclosure, the consumer may make an affirmative election of a specific type of brokerage arrangement that is available from the real estate brokerage company. The brokerage agreement shall contain a statement of the terms and conditions of the brokerage services that the broker will provide. In the absence of a signed brokerage agreement between the parties, the transaction brokerage relationship shall remain in effect.

(f) When serving as a transaction broker, the duties of the licensee to all the parties to a real estate transaction are limited to those which are enumerated in Section 34-27-84. A signed brokerage agreement between the parties or, in the absence of a signed brokerage agreement, the continuation of the transaction brokerage relationship, shall constitute informed consent by the consumer as to the services the consumer shall receive from the broker.

(g) Disclosure forms shall be provided to buyers and sellers. All real estate brokerage firms operating within the State of Alabama shall use the same agency disclosure forms. Disclosure forms describing the alternative types of brokerage services identified above shall be written by the Alabama Real Estate Commission.

(h) Nothing in this section shall prohibit the consumer from entering into a written contract with a broker which contains provisions for services not specifically identified in the written disclosure form.

CREDIT(S)
(Acts 1995, No. 95-211, p. 341, § 3; Act 98-618, p. 1359, § 1.)

§ 34-27-83. Agency disclosure office policy.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

Any broker acting in a real estate transaction shall adopt a written agency disclosure office policy which specifically enumerates the types of brokerage service arrangements a licensee may offer or accept.

(a) The qualifying broker for each brokerage company shall provide every licensee a copy of the agency disclosure policy regarding the types of brokerage services offered by their company. This policy shall be explained to all licensees at least once a year.

(b) A form acknowledging receipt of the office policy statement and a satisfactory explanation of its contents shall be signed by each licensee and a copy retained by the brokerage company

for three years.
CREDIT(S)
(Acts 1995, No. 95-211, p. 341, § 4.)

§ 34-27-84. Obligations of licensees.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

- (a) Licensees shall have all of the following obligations to all parties in a real estate transaction:
- (1) To provide brokerage services to all parties to the transaction honestly and in good faith.
 - (2) To exercise reasonable skill and care in providing brokerage services to all parties.
 - (3) To keep confidential any information given to the licensee in confidence, or any information obtained by the licensee that the licensee knows a reasonable individual would want to keep confidential, unless disclosure of this information is required by law, violates a fiduciary duty to a client, becomes public knowledge, or is authorized by the party in writing.
 - (4) To account for all property coming into the possession of the licensee that belongs to any party to the real estate transaction.
 - (5) When assisting a party in the negotiation of a real estate transaction, to present all written offers in a timely and truthful manner.
 - (6) To act on behalf of the licensee or his or her immediate family, or on behalf of any other individual, organization, or business entity in which the licensee has a personal interest only with prior timely written disclosure of this interest to all parties to the transaction.
- (b) A licensee may provide requested information which affects a transaction to any party who requests the information, unless disclosure of the information is prohibited by law or in this article.
- (c) When accepting an agreement to list an owner's property for sale, the broker or his or her licensee shall, at a minimum, accept delivery of and present to the consumer all offers, counteroffers, and addenda to assist the consumer in negotiating offers, counteroffers, and addenda, and to answer the consumer's questions relating to the transaction.

CREDIT(S)
(Acts 1995, No. 95-211, p. 341, § 5; Act 2005-314, 1st Sp. Sess., p. 646, § 1.)

§ 34-27-85. Services licensees required to provide.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

- (a) In addition to the duties enumerated in Section 34-27-84, a licensee shall provide all of the following services to clients:
- (1) Loyally represent the best interests of the client by placing the interests of the client ahead of the interests of any other party, unless loyalty to a client violates the duties of the licensee to other parties under Section 34-27-84, or is otherwise prohibited by law.
 - (2) Disclose to the client all information known by the licensee that is material to the transaction and not discoverable by the client through reasonable investigation and observation, except for confidential information as provided in subdivision (3) of subsection (a) of Section 34-27-84. A licensee shall have no affirmative duty to discover the information.
 - (3) Fulfill any obligation required by the agency agreement, and any lawful instructions of the client that are within the scope of the agency agreement, that are not inconsistent with other duties as enumerated in this article.
- (b) A broker who represents more than one client in a real estate transaction owes the duties as specified in subsection (a) to each client, except where the duties to one client will violate the fiduciary duties of the licensee to other clients.
- (c) A broker may provide brokerage services as a limited consensual dual agent only with the prior

written, informed consent of all clients of the broker in the transaction.

CREDIT(S)

(Acts 1995, No. 95-211, p. 341, § 6.)

§ 34-27-86. Misrepresentation or false information given by licensee.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) A client is not liable for a misrepresentation made by a broker in connection with the broker providing brokerage services unless the client knows or should have known of the misrepresentation or the broker is repeating a misrepresentation made by the client to the broker.

(b) A licensee shall not be liable for providing false information to a party in a real estate transaction if the false information was provided to the licensee by a client of the licensee or by a customer or by another licensee unless the licensee knows or should have known that the information was false.

CREDIT(S)

(Acts 1995, No. 95-211, p. 341, § 7.)

§ 34-27-87. Duties supersede duties based on common law.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

The duties of licensees as specified in this article or in rules promulgated by the Alabama Real Estate Commission shall supersede any duties of a licensee to a party to a real estate transaction which are based upon common law principles of agency to the extent that those common law duties are inconsistent with the duties of licensees as specified in this article.

CREDIT(S)

(Acts 1995, No. 95-211, p. 341, § 8.)

§ 34-27-88. Violations.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

A violation or disregard of any provision of this article shall constitute a violation actionable by the commission pursuant to Section 34-27-36, as amended.

CREDIT(S)

(Acts 1995, No. 95-211, p. 341, § 9.)

ARTICLE 5. . INTERFERENCE WITH A REAL ESTATE BROKERAGE RELATIONSHIP.

§ 34-27-100. Definitions.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

For the purposes of this article, the following terms shall have the following meanings:

(1) Actual introduction.

a. When the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to the time the customer has executed a real estate brokerage services disclosure form or waived execution in writing or the customer has executed a buyer's agency agreement, property listing agreement, or a transaction brokerage agreement;
or

b. For real estate transactions in which the law of this state does not require the presentation of a real estate brokerage services disclosure form, when the buyer, seller, landlord, or tenant has been referred to the real estate licensee by the person or entity seeking the referral fee prior to

any contact between the buyer, seller, landlord, or tenant and the real estate licensee during which their real estate business has been discussed.

(2) Interference with a real estate brokerage relationship. Demanding a referral fee from a real estate licensee when reasonable cause for payment does not exist. The term "interference with a real estate brokerage relationship" may also include a threat by a third party to reduce, withhold, or eliminate any relocation or other benefits, or the actual reduction, withholding, or elimination of any relocation or other benefit, in order to generate a referral fee from a real estate broker when reasonable cause for payment does not exist. Notwithstanding the foregoing, either of the following shall not constitute interference with a real estate brokerage relationship:

a. Communications between an employer or its representative and an employee concerning relocation policies and benefits.

b. Advising a party of the right to allow a brokerage relationship to expire pursuant to its own terms or not to renew the brokerage relationship upon expiration.

(3) Real estate brokerage relationship. A relationship entered into between a real estate broker or salesperson and a buyer, seller, landlord, or tenant under which the real estate broker or salesperson engages in any of the acts set forth in Alabama real estate license law, but the relationship does not exist prior to actual introduction of the relationship as provided in subdivision (1).

(4) Reasonable cause for payment. When an actual introduction of business has been made, a subagency relationship between brokers exists, a contractual referral fee relationship or other agreement exists, or a contractual cooperative brokerage relationship exists.

(5) Referral fee. Any fee or commission paid by a real estate licensee to any person or entity, other than a cooperative commission offered by a listing real estate broker to a selling real estate broker or by a selling real estate broker to a listing real estate broker.

CREDIT(S)

(Act 2000-210, p. 277, § 1.)

§ 34-27-101. Violations; damages.

The statutes are current through Act 2010-499 of the 2010 Regular Session.

(a) No licensed real estate broker shall be required to pay a referral fee or commission when reasonable cause for payment does not exist.

(b) No third party shall knowingly interfere with the real estate brokerage relationship of a real estate licensee.

(c) Any person aggrieved by a violation of any provision of this article may bring a civil action in any court of competent jurisdiction. The damages recoverable in such an action shall be actual damages and, in addition, the court may award an amount up to three times the amount of actual damages sustained as a result of any violation of this article, plus reasonable attorney fees and expenses.

CREDIT(S)

(Act 2000-210, p. 277, § 2.)

Pass / Fail Rates By Alabama Public University Programs

School	Calendar Year 2007			Calendar Year 2008			Calendar Year 2009			Calendar Year 2010			4 Year Totals		
	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed
ALABAMA STATE UNIVERSITY	7	6	85.71%	14	6	42.86%	13	4	30.77%	11	6	54.55%	45	22	48.89%
AUBURN MONTGOMERY							3	2	66.67%	1	0	0.00%	4	2	50.00%
AUBURN UNIVERSITY - MAIN CAMPUS	39	20	51.28%	15	7	46.67%	8	5	62.50%	3	1	33.33%	65	33	50.77%
AUBURN UNIVERSITY-OPO	34	13	38.24%	23	8	34.78%							57	21	36.84%
BEVILL STATE COMMUNITY COLLEGE-HAMILTON	1	0	0.00%										1	0	0.00%
BEVILL STATE COMMUNITY COLLEGE-JASPER	32	19	59.38%	30	17	56.67%	10	2	20.00%				72	38	52.78%
CALHOUN COMMUNITY COLLEGE	20	6	30.00%	10	2	20.00%	7	1	14.29%	1	1	100.00%	38	10	26.32%
FAULKNER CC	19	7	36.84%										19	7	36.84%
JACKSONVILLE STATE UNIVERSITY	15	10	66.67%				1	0	0.00%	2	1	50.00%	18	11	61.11%
JACKSONVILLE STATE UNIVERSITY	5	4	80.00%	3	3	100.00%	2	2	100.00%				10	9	90.00%
JEFFERSON STATE COMMUNITY COLLEGE	20	3	15.00%	18	9	50.00%	4	3	75.00%				42	15	35.71%
SHELTON STATE COMMUNITY COLLEGE	112	33	29.46%	80	30	37.50%	68	28	41.18%	25	5	20.00%	285	96	33.68%
SOUTHERN UNION STATE COMM COLLEGE	25	11	44.00%	16	2	12.50%	1	1	100.00%				42	14	33.33%
TROY UNIVERSITY-DOTHAN	94	48	51.06%	64	33	51.56%	29	14	48.28%	27	16	59.26%	214	111	51.87%
TUSKEGEE UNIVERSITY	2	0	0.00%							2	0	0.00%	4	0	0.00%
UNIVERSITY OF ALABAMA	16	9	56.25%	5	2	40.00%	18	11	61.11%	14	9	64.29%	53	31	58.49%
UNIVERSITY OF NORTH ALABAMA				6	2	33.33%	5	1	20.00%				11	3	27.27%
UNIVERSITY OF SOUTH ALABAMA	4	1	25.00%	7	4	57.14%	6	4	66.67%	2	2	100.00%	19	11	57.89%
UNIVERSITY OF WEST ALABAMA	7	4	57.14%										7	4	57.14%
WALLACE COMMUNITY COLLEGE - SELMA	7	2	28.57%	2	0	0.00%				29	5	17.24%	38	7	18.42%
WALLACE STATE COMM COLL - HANCEVILLE	30	13	43.33%	17	10	58.82%	6	1	16.67%	5	3	60.00%	58	27	46.55%
TOTALS	489	209	42.74%	310	135	43.55%	181	79	43.65%	122	49	40.16%	1102	472	42.83%

Pass / Fail Rates By Alabama Private Programs

	Fiscal Year 2007			Fiscal Year 2008			Fiscal Year 2009			Fiscal Year 2010			4 Year Average		
	# Receive d Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed	# Received Exam	# Passed	% Passed
4 Star - Gulf Shores	11	8	72.73%	2	2	100.00%							13	10	76.92%
4 Star - Mobile	39	9	23.08%										39	9	23.08%
1st Choice Real Estate School										3	2	66.67%	3	2	66.67%
ABANA SCHOOL OF REAL ESTATE	36	11	30.56%	9	2	22.22%	4	1	25.00%				49	14	28.57%
ACADEMY OF REAL ESTATE	364	163	44.78%	157	83	52.87%	96	60	62.50%	61	35	57.38%	678	341	50.29%
ALABAMA CENTER FOR REAL ESTATE	17	9	52.94%	35	23	65.71%	1	0	0.00%				53	32	60.38%
ALABAMA COURSES IN REAL ESTATE	143	57	39.86%	37	28	75.68%	40	26	65.00%				220	111	50.45%
ALABAMA INST. IN RE	15	6	40.00%	11	6	54.55%							26	12	46.15%
ALABAMA REAL ESTATE ACADEMY INC	27	8	29.63%	10	5	50.00%	5	2	40.00%	1	1	100.00%	43	16	37.21%
Alabama Real Estate Commission							8	1	12.50%	19	4	21.05%	27	5	18.52%
ALABAMA REAL ESTATE INSTITUTE	5	5	100.00%	12	5	41.67%	24	15	62.50%	17	10	58.82%	58	35	60.34%
ALABAMA SCHOOL OF REAL ESTATE	133	58	43.61%	108	45	41.67%	50	26	52.00%	28	9	32.14%	319	138	43.26%
ALLIANCE GROUP REAL ESTATE SCHOOL	7	4	57.14%	7	4	57.14%							14	8	57.14%
AMERICAN REAL ESTATE INSTITUTE	3	3	100.00%										3	3	100.00%
AMERICAN REAL ESTATE INSTITUTE - OPELIKA	34	23	67.65%	9	8	88.89%	3	3	100.00%				46	34	73.91%
AMERICAN SCHOOL OF REAL ESTATE EXPRESS LLC										117	72	61.54%	117	72	61.54%
AMERICAS BEST ON-LINE REAL ESTATE EDUCATION	67	48	71.64%	48	29	60.42%	40	24	60.00%	22	9	40.91%	177	110	62.15%
ANVIL PROPERTY BROKERS SCHOOL OF REAL ESTATE	13	4	30.77%	6	2	33.33%	1	0	0.00%				20	6	30.00%
ARONOV PROFESSIONAL CAREER SCHOOL - PRATTVILLE	28	11	39.29%	2	1	50.00%							30	12	40.00%
ARONOV PROFESSIONAL CAREER SCHOOL	139	57	41.01%	21	3	14.29%				6	6	100.00%	166	66	39.76%
ARTHUR ELLIS REAL ESTATE SCHOOL	11	9	81.82%	26	15	57.69%	14	6	42.86%				51	30	58.82%

ASKEW SCHOOL OF REAL ESTATE										1	0	0.00%	1	0	0.00%
AVERY YARBROUGH & ASSOCIATES-ANNISTON	52	28	53.85%	32	21	65.63%	17	10	58.82%	4	3	75.00%	105	62	59.05%
AVERY YARBROUGH & ASSOCIATES - ATHENS	10	1	10.00%										10	1	10.00%
AVERY YARBROUGH & ASSOCIATES-BHAM	499	254	50.90%	309	164	53.07%	214	110	51.40%	170	89	52.35%	1192	617	51.76%
AVERY YARBROUGH & ASSOCIATES-DOTHAN	48	24	50.00%	35	14	40.00%	27	8	29.63%				110	46	41.82%
AVERY YARBROUGH & ASSOCIATES-ENTERPRISE	23	11	47.83%	17	5	29.41%	2	0	0.00%				42	16	38.10%
AVERY YARBROUGH & ASSOCIATES - HUNTSVILLE	11	6	54.55%										11	6	54.55%
AVERY YARBROUGH & ASSOCIATES - HUNTSVILLE	2	1	50.00%										2	1	50.00%
AVERY YARBROUGH & ASSOCIATES-MOBILE	40	20	50.00%	6	2	33.33%	2	2	100.00%				48	24	50.00%
AVERY YARBROUGH & ASSOCIATES-PHENIX CITY	56	13	23.21%	9	2	22.22%							65	15	23.08%
AVERY YARBROUGH & ASSOCIATES-PHENIX CITY	24	7	29.17%	9	2	22.22%							33	9	27.27%
AVERY YARBROUGH & ASSOCIATES-PHENIX CITY	24	7	29.17%	15	3	20.00%	1	1	100.00%				40	11	27.50%
AVERY YARBROUGH & ASSOCIATES - PRATTVILLE	1	1	100.00%										1	1	100.00%
BARNES & ASSOCIATES REAL ESTATE ACADEMY				28	5	17.86%	6	2	33.33%				34	7	20.59%
BEN PORTER SCH OF REAL ESTATE							1	1	100.00%	31	12	38.71%	32	13	40.63%
BIRMINGHAM GUARANTY REALTY SCH-BHAM	27	5	18.52%	19	5	26.32%	4	1	25.00%				50	11	22.00%
BIRMINGHAMJ GUARANTY REALTY SCH - MGM	13	3	23.08%										13	3	23.08%
BIRMINGHAM SCHOOL OF REAL ESTATE	43	21	48.84%	12	6	50.00%	12	3	25.00%				67	30	44.78%
BIRMINGHAM SCHOOL OF REAL ESTATE - FAIRFIELD	1	1	100.00%	1	1	100.00%							2	2	100.00%
BISHOP STATE COMMUNITY COLLEGE							6	0	0.00%				6	0	0.00%
BO GOODSON REAL ESTATE SCHOOL	69	23	33.33%	45	18	40.00%	21	11	52.38%	13	2	15.38%	148	54	36.49%
BOBS SCHOOL OF REAL ESTATE	7	2	28.57%	2	0	0.00%	1	0	0.00%				10	2	20.00%

BOWER SCHOOL OF REAL ESTATE	29	10	34.48%	20	9	45.00%	3	2	66.67%				52	21	40.38%
BUSINESS EDUCATORS	1	0	0.00%										1	0	0.00%
CAPSTONE SCHOOL OF REAL ESTATE LLC	19	11	57.89%	8	1	12.50%							27	12	44.44%
CAREER ACADEMY OF REAL ESTATE	6	3	50.00%	84	51	60.71%	110	76	69.09%	114	73	64.04%	314	203	64.65%
CAREER WEBSCHOOL	253	176	69.57%	156	91	58.33%	107	64	59.81%	102	54	52.94%	618	385	62.30%
CENTRAL ALABAMA REAL ESTATE ACADEMY	34	21	61.76%	22	10	45.45%	3	2	66.67%	2	1	50.00%	61	34	55.74%
CENTURY 21 REAL ESTATE CORPORATION/lapsed	1	0	0.00%	2	1	50.00%	1	1	100.00%				4	2	50.00%
CENTURY 21 TOWN N COUNTRY	2	2	100.00%	1	0	0.00%							3	2	66.67%
CLICKCE LLC	1	1	100.00%										1	1	100.00%
COASTAL ALABAMA REAL ESTATE SCHOOL							10	6	60.00%	18	11	61.11%	28	17	60.71%
COOKE REAL ESTATE SCHOOL HEADQUARTERS	3	3	100.00%	4	2	50.00%	2	1	50.00%	6	4	66.67%	15	10	66.67%
DAUPHIN SCHOOL OF R E-MOBILE	3	2	66.67%	3	2	66.67%							6	4	66.67%
DAVID KAHN SCHOOL OF R E-MONTGOMERY	12	9	75.00%	2	2	100.00%	1	1	100.00%				15	12	80.00%
DEBBIE COX SCHOOL OF REAL ESTATE							12	5	41.67%	5	4	80.00%	17	9	52.94%
DMG REAL ESTATE SCHOOL	3	3	100.00%	18	9	50.00%	12	6	50.00%	5	1	20.00%	38	19	50.00%
DOTHAN ASSOCIATION OF REALTORS	1	1	100.00%	7	6	85.71%							8	7	87.50%
DUDLEY SCHOOL OF REAL ESTATE	5	2	40.00%	2	2	100.00%				1	1	100.00%	8	5	62.50%
E S BROOKS SCHOOL OF REAL ESTATE	35	22	62.86%	62	41	66.13%	75	38	50.67%	30	16	53.33%	202	117	57.92%
EAST ALABAMA REAL ESTATE INSTITUTE										6	3	50.00%	6	3	50.00%
ERA Jefferson School of R E	13	3	23.08%	6	3	50.00%	2	1	50.00%				21	7	33.33%
FORTUNE SCHOOL OF REAL ESTATE	100	55	55.00%	27	15	55.56%	4	1	25.00%				131	71	54.20%
GREYSTONE SCHOOL OF REAL ESTATE	23	11	47.83%	10	2	20.00%	3	3	100.00%	5	5	100.00%	41	21	51.22%
GOLD COAST PROFESSIONAL	1	1	100.00%	3	1	33.33%							4	2	50.00%
GULF COAST SCHOOL OF REAL ESTATE				3	3	100.00%							3	3	100.00%

HUNTSVILLE REAL ESTATE SCHOOL	29	16	55.17%	31	16	51.61%	18	9	50.00%				78	41	52.56%
JIM WRIGHT SCHOOL OF REAL ESTATE	7	3	42.86%	7	5	71.43%	1	1	100.00%	3	1	33.33%	18	10	55.56%
JME - MOBILE	4	1	25.00%										4	1	25.00%
KAPLAN REAL ESTATE SCHOOLS				1	1	100.00%	11	9	81.82%	8	6	75.00%	20	16	80.00%
LAH SCHOOL OF REAL ESTATE	51	33	64.71%	24	18	75.00%	12	7	58.33%				87	58	66.67%
LAWSON STATE COMMUNITY COLLEGE	4	0	0.00%										4	0	0.00%
MARTIN & FELLOWS REAL ESTATE SCHOOL				28	16	57.14%	24	14	58.33%	14	10	71.43%	66	40	60.61%
MEYER SCHOOL OF REAL ESTATE	9	7	77.78%										9	7	77.78%
NATIONAL SCHOOL OF R E- HUNTSVILLE	321	184	57.32%	218	106	48.62%	261	125	47.89%	194	84	43.30%	994	499	50.20%
NATIONAL SCHOOL OF R E- ATHENS	51	22	43.14%	19	11	57.89%	10	5	50.00%				80	38	47.50%
NATIONAL SCHOOL OF R E- DECATUR	13	9	69.23%	14	7	50.00%	1	1	100.00%				28	17	60.71%
NATIONAL SCHOOL OF RE - CULLMAN	6	3	50.00%										6	3	50.00%
NATIONAL SCHOOL OF REAL ESTATE - CULLMAN	1	1	100.00%	4	1	25.00%							5	2	40.00%
NATIONAL SCHOOL OF REAL ESTATE - GUNTERSVILLE	4	2	50.00%	18	8	44.44%	5	2	40.00%				27	12	44.44%
NATIONAL SCHOOL OF REAL ESTATE - SCOTTSBORO	10	3	30.00%	5	0	0.00%							15	3	20.00%
NATIONAL ASSOCIATION OF REALTORS				1	1	100.00%							1	1	100.00%
NATIONWIDE REAL ESTATE SCHOOL	8	3	37.50%	9	3	33.33%	1	1	100.00%				18	7	38.89%
NEGARA REAL ESTATE & APPRAISAL SCHOOL	15	7	46.67%										15	7	46.67%
NICHOLAS MCDANIEL SCHOOL OF REAL ESTATE										2	2	100.00%	2	2	100.00%
NORTH ALABAMA SCHOOL OF REAL ESTATE	64	31	48.44%	40	12	30.00%	24	10	41.67%	13	8	61.54%	141	61	43.26%
OXFORD SCHOOL OF REAL ESTATE	27	17	62.96%	15	5	33.33%	11	6	54.55%	1	0	0.00%	54	28	51.85%
OXFORD SCHOOL OF REAL ESTATE - GARDENDALE	1	1	100.00%	19	9	47.37%	2	2	100.00%				22	12	54.55%

OXFORD SCHOOL OF REAL ESTATE - GREYSTONE	1	1	100.00%															1	1	100.00%
PREMIERE SCHOOL OF REAL ESTATE-MONTGOMERY	4	4	100.00%	2	1	50.00%	2	0	0.00%									8	5	62.50%
PROFESSIONAL REAL ESTATE INSTITUTE				8	2	25.00%												8	2	25.00%
PROFESSIONAL SCH OF REAL ESTATE - GULF SHORES	14	13	92.86%	7	4	57.14%	6	4	66.67%	1	1	100.00%						28	22	78.57%
PROFESSIONAL SCHOOL OF REAL ESTATE	80	44	55.00%	69	31	44.93%	53	21	39.62%	29	13	44.83%						231	109	47.19%
PROFESSIONAL SERVICES REAL ESTATE SCHOOL				5	3	60.00%	13	7	53.85%	9	7	77.78%						27	17	62.96%
REAL ESTATE ACADEMY OF LEARNING	93	41	44.09%	55	22	40.00%	28	16	57.14%	24	6	25.00%						200	85	42.50%
REAL ESTATE ACADEMY OF LEARNING - MADISON				2	1	50.00%												2	1	50.00%
REAL ESTATE CAREER CENTER	41	18	43.90%				3	2	66.67%									44	20	45.45%
REAL ESTATE CAREER INTSITUTE - ALBERTVILLE	7	4	57.14%	1	0	0.00%												8	4	50.00%
REAL ESTATE CAREER INST- ATTALLA	44	16	36.36%	18	8	44.44%	2	1	50.00%									64	25	39.06%
REAL ESTATE CAREER INSTITUTE - ARAB	5	3	60.00%	1	1	100.00%												6	4	66.67%
REAL ESTATE CAREER INSTITUTE - DAPHNE				25	11	44.00%												25	11	44.00%
REAL ESTATE CAREET INSTITUTE - FT. PAYNE	1	1	100.00%	5	1	20.00%												6	2	33.33%
REAL ESTATE EDUCATION CENTER	6	5	83.33%	7	5	71.43%												13	10	76.92%
REAL ESTATE EXPRESS LLC	328	212	64.63%	203	134	66.01%	150	109	72.67%									681	455	66.81%
REAL ESTATE INSTITUTE				2	2	100.00%												2	2	100.00%
REAL ESTATE LEARNING CENTER				1	0	0.00%	3	1	33.33%									4	1	25.00%
REAL ESTATE LEARNING CENTER OF NORTH ALABAMA										6	3	50.00%						6	3	50.00%
REAL ESTATE SCHOOL OF MOBILE				9	4	44.44%	2	2	100.00%									11	6	54.55%
REAL ESTATE SUCCESS INSTITUTE	108	56	51.85%	35	22	62.86%	36	18	50.00%	13	7	53.85%						192	103	53.65%
REALTY NOW SCHOOL OF RE				1	0	0.00%												1	0	0.00%
REALTYSOUTH TRAINING & BUSINESS CENTER	365	196	53.70%	118	49	41.53%	75	18	24.00%	37	12	32.43%						595	275	46.22%

REALTY SOUTH - GARDENDALE	3	0	0.00%	2	0	0.00%				5	0	0.00%
REALTY SOUTH - SHELBY	8	3	37.50%	3	3	100.00%				11	6	54.55%
REALTY SOUTH - TRUS CROS	10	3	30.00%	4	1	25.00%				14	4	28.57%
REALTY SOUTH - TRUSSVILLE	7	6	85.71%	13	6	46.15%				20	12	60.00%
REALTY SOUTH - I-459	13	5	38.46%	8	4	50.00%				21	9	42.86%
REALTY SOUTH TRAINING & BUS. CENTER				2	1	50.00%				2	1	50.00%
REGENCY SCHOOL OF REAL ESTATE							7	4	57.14%	11	4	36.36%
RESCO SCHOOL OF REAL ESTATE	6	4	66.67%	3	0	0.00%				9	4	44.44%
RISE SCHOOL OF REAL ESTATE-HUNTSVILLE	28	18	64.29%	21	10	47.62%	10	5	50.00%	7	3	42.86%
RISE SCHOOL OF REAL ESTATE-MADISON	11	5	45.45%	1	1	100.00%				12	6	50.00%
SCOTT HICKMAN SCHOOL OF REAL ESTATE	27	14	51.85%	25	8	32.00%	14	11	78.57%	13	7	53.85%
SHEPHERD BROKERS.COM REAL ESTATE ACADEMY				28	14	50.00%	24	15	62.50%	13	6	46.15%
SHERRY WEEKS REAL ESTATE ACADEMY	19	12	63.16%	12	2	16.67%	9	3	33.33%	1	0	0.00%
SHOALS SCHOOL OF BUSINESS INC	90	34	37.78%	60	24	40.00%	31	15	48.39%	11	7	63.64%
SHOWCASE REAL ESTATE ACADEMY										3	2	66.67%
SNEAD STATE COMMUNITY COLLEGE				1	0	0.00%				1	0	0.00%
SOUTHEASTERN SCHOOL OF REAL ESTATE	20	3	15.00%	8	3	37.50%	2	0	0.00%	7	2	28.57%
THE REAL ESTATE SCHOOL	1	0	0.00%							1	0	0.00%
THE RIVER REGION SCHOOL OF REAL ESTATE				1	1	100.00%				1	1	100.00%
THOMAS REAL ESTATE ACADEMY	12	4	33.33%	11	5	45.45%	4	1	25.00%			
TUSCALOOSA ASSOC. OF REALTORS SCHOOLI RE	13	5	38.46%	2	1	50.00%	1	1	100.00%			
TUSCALOOSA REAL ESTATE SCHOOL	11	4	36.36%	4	1	25.00%	1	1	100.00%			
TUSCALOOSA SCHOOL OF REAL ESTATE	5	2	40.00%	4	1	25.00%				9	3	33.33%

UNITED REAL ESTATE INSTITUTE-OPELIKA	29	7	24.14%	1	0	0.00%							30	7	23.33%
UNITED REAL ESTATE SCHOOL	51	35	68.63%	21	15	71.43%	5	5	100.00%				77	55	71.43%
WIREGRASS REAL ESTATE SCHOOL	21	12	57.14%	14	5	35.71%	3	2	66.67%	1	0	0.00%	39	19	48.72%
TOTAL	4694	2390	50.92%	2755	1386	50.31%	1810	974	53.81%	1208	618	51.16%	10467	5368	51.28%

Source of information: Real Estate Commission Education Administrator

Private Schools: (4 year percentages used)

Median percentage passed = **47.50%**

Public Schools: (4 year percentages used)

Median percentage passed = **46.55%**



2010-074

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

June 21, 2010

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Regina A. Dinger
Executive Director
Board of Licensure for Professional
Engineers and Land Surveyors
100 North Union Street, Suite 382
Montgomery, AL 36130-4451

Engineers and Land Surveyors Board -
Licenses - Social Security Numbers -
Public Records

The Board of Licensure for Professional Engineers and Land Surveyors ("Board") is required to obtain a Social Security number for each application for a new or renewal license.

Pursuant to section 41-13-6 of the Code of Alabama, the Board may not publish an individual's complete, nine-digit Social Security number on public records. When, however, a number is needed for identification purposes, the last four digits of a Social Security number may be used.

Dear Ms. Dinger:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) If an agency has previously obtained the full Social Security number of an individual, would the collection of the last four digits of the individual's Social Security number on a license renewal application satisfy the requirements of the current statutes?

(2) Would the release of the last four digits of a licensee's Social Security number on a public record comply with the restrictions contained in the requirements of current statutes?

FACTS AND ANALYSIS

Section 30-3-194 of the Code of Alabama addresses the collection of Social Security numbers to issue various licenses within the state. It states as follows:

(a) Any agency charged with the administration of any law concerning the issuance or renewal of a license, certificate, permit, or other authorization to drive a private or commercial motor vehicle or to engage in a profession, occupation, or recreational, sporting, or commercial activity shall require all applicants for issuance or renewal of the license, certificate, permit or other authorization to provide the applicant's ***Social Security number to the agency***, which agency shall record the Social Security number on the application and related records maintained by the agency.

ALA. CODE § 30-3-194(a) (emphasis added) (Supp. 2009).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex Parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex Parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997). The plain language of section 30-3-194(a) of the Code requires that Social Security numbers are collected from all applicants, whether they are renewing a license or seeking a new license.

In addition, this Office has previously concluded that if a Social Security number is not given, then the license application is not in conformity with the statutes, and no license may be issued. Opinion to Honorable Tish P. Spencer, Executive Director, Home Builders Licensure Board, dated January 5, 1998, A.G. No. 98-00066. Therefore, the Board of Licensure for Professional Engineers and Land Surveyors is required to obtain the entire Social Security number for each new or renewal license application.

Your second question asks whether the last four digits of an individual's Social Security number may be disclosed in public records. Section 41-13-6 of the Code of Alabama, which discusses this very issue, states as follows:

Notwithstanding any other law to the contrary, *a state department, licensing or regulatory board, agency, or commission is prohibited from placing or otherwise revealing the Social Security number of a person*, including, but not limited to, full- or part-time employees thereof, *on any document that is available for public inspection* including, but not limited to, state personnel evaluation forms and any other forms related thereto unless otherwise required by law, without the express consent of the person with the number, or the consent of that person's parent, custodian, legal guardian, or legal representative. The foregoing prohibition shall not apply when a federal or state agency makes a request for or releases a Social Security number for a legitimate government purpose, or pursuant to a federal or state statute, regulation, or federally funded program or pursuant to an administrative or judicial subpoena or order. Nothing in this section is intended to create or establish a new cause of action for damages in any court. Nothing in this section shall be construed as a waiver of sovereign or qualified immunity. This section shall not be applicable to a document originating with any court or taxing authority, any document that when filed by law constitutes a consensual or nonconsensual lien or security lien or security interest, or any record of judgment, conviction, eviction, or bankruptcy. *If express consent to reveal a Social Security number has not been obtained, a state department or agency shall redact, remove, cover, or otherwise excise the Social Security number of any person from any document that is available for public inspection so that the remaining portion of the document may be revealed.*

ALA. CODE § 41-13-6 (emphasis added) (Supp. 2009). When analyzing a statute, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Cove*, 796 So. 2d at 333-34. Your particular inquiry seeks clarification as to whether the last four digits of a Social Security number are the same as an entire Social Security number.

The United States government began issuing Social Security numbers in 1936. Social Security Administration, History of Social Security, <http://www.ssa.gov/history/ssn/firstcard.html> (Apr. 28, 2010). Since initial passage of the Social Security Act, Social Security numbers have come to be used for various governmental purposes such as individual taxpayer identification numbers, and the number is now commonly viewed as a personal identifier. Social Security Administration, Social Security Number Chronology, <http://www.ssa.gov/history/ssn/ssnchron.html> (April 30, 2010); *In re Gongaware v. U.S.A., Internal Revenue Serv.*, 207 B.R. 95, 99 (Bankr. W.D. Pa. 1997). It is generally accepted that the term "Social Security number" refers to a nine-digit number specific to an individual. See, generally, *Gongaware*, citing 26 C.F.R. § 31.3406(h)-1(b) (2010).

Moreover, courts have distinguished between the use of the nine-digit Social Security number and the use of the last four digits of a Social Security number. See *In re Newton*, 2009 WL 277437 (Jan. 29, 2009) (allowing the use of only the last four digits in court filings). The Ninth Circuit, in *U.S. v. Melendrez*, allowed the last four digits of the Social Security numbers in question to be released for identification purposes, but prohibited the use of the complete, nine-digit Social Security numbers. *U.S. v. Melendrez*, 389 F.3d 829, 831 (9th Cir. 2004). Further, a Florida court found that the use of the last four digits was not sufficient to comply with a statute requiring an identifying number to be placed on all filings. *In re Carrier*, 363 B.R. 247, 251 (Bankr. M.D. Fla. 2006).

Based on the foregoing, it is the opinion of this Office that the Board may not publish an individual's full, nine-digit Social Security number on public records. If, however, a number is needed for identification purposes, the last four digits of an individual's Social Security number may be used.

CONCLUSION

The Board of Licensure for Professional Engineers and Land Surveyors is required to obtain a Social Security number for each application for a new or renewal license.

Pursuant to section 41-13-6, the Board may not publish an individual's complete, nine-digit Social Security number on public records. When, however, a number is needed for identification purposes, the last four digits of a Social Security number may be used.

Honorable Regina A. Dinger
Page 5

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/MMG/lcr
971219/142072

Commission Members



1201 Carmichael Way • Montgomery, Alabama 36106
Telephone: 334.242.5544 • Fax: 334.270.9118
arec.alabama.gov

D. PHILIP LASATER, Executive Director
PATRICIA ANDERSON, Assistant Executive Director

June 8, 2011

Robin Hutcheson
Examiners of Public Accounts
P. O. Box 3022551
Montgomery, AL 36130-2251

Dear Ms. Hutcheson

Following are the names, positions, residential addresses, expiration of terms, and dates of appointment of each current and newly-confirmed Commission member and the agency head:

D. Philip Lasater
Executive Director
1733 South Perry Street
Montgomery, AL 36104
Expiration of Term: N/A
Date of Appointment: 02/15/1989

Jewel D. Buford, Vice Chairman
Industry Member (District 7)
6330 Championship Drive
Tuscaloosa, AL 35405
Expiration of Term: 09/30/2014
Date of Appointment: 10/01/2009

Charles S. (Steve) Cawthon
Industry Member (District 5)
P. O. Box 4271
Huntsville, AL 35815
Expiration of Term: 09/30/2012
Date of Appointment: 10/01/2007

J. Reid Cummings
Industry Member (District 1)
501 Highland Woods Drive East
Mobile, AL 36608
Expiration of Term: 09/30/2016
Date of Appointment: 10/01/2011

Carole Harrison
Industry Member (District 3)
714 2nd Avenue
Opelika, AL 36830
Expiration of Term: 09/30/2016
Date of Appointment: 10/01/2011

Sheila S. Hodges, Chairman
Industry Member (District 1)
P. O. Box 276
Gulf Shores, AL 36547
Expiration of Term: 09/30/2011
Date of Appointment: 10/01/2006

Clifton Miller
Industry Member (Member-At-Large)
140 Whisperwood Lane
Madison, AL 35758
Expiration of Term: 09/30/2013
Date of Appointment: 10/1/2008

Janet R. Morris
Industry Member (District 3)
8351 Timber Trace Lane
Pike Road, AL 36064
Expiration of Term: 09/30/2011
Date of Appointment: 10/1/2006

Our Mission: To serve the public through the licensing and regulating of Real Estate licensees.

Dorothy P. Riggins-Allen
Consumer Member
424 Wiltshire Drive
Montgomery, AL 36117
Expiration of Term: 09/30/2011
Date of Appointment: 10/1/2006

Danny Sharp
Industry Member (District 2)
210 Ashborough Circle
Dothan, AL 36301
Expiration of Term: 09/30/2015
Date of Appointment: 10/1/2010

William A. (Bill) Watts, III
Industry Member (District 6)
P. O. Box 11425
Birmingham, AL 35202
Expiration of Term: 09/30/2011
Date of Appointment: 06/14/2007
Reappointed-Expiration of Term: 09/30/2016
Reappointed-Date of Appointment: 10/01/2011

Nancy D. Wright
Industry Member (District 4)
1736 Morning Drive NE
Cullman, AL 35055
Expiration of Term: 09/30/2013
Date of Appointment: 10/01/2008

Sincerely



D. Philip Lasater
Executive Director

DPL/DLM

BOARD RESPONSE TO SIGNIFICANT ISSUES

June 10, 2011

Mr. John E. Norris, Director, Operational Division
State of Alabama Department of Examiners of Public Accounts
P O Box 302251
Montgomery, Alabama 36130-2251

RE: Response to Significant Issues in Sunset Audit Report

Dear Mr. Norris

Please receive our responses offered below to your May 31 correspondence.

Significant Issue 2011-01

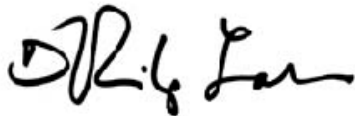
The Real Estate Commission believes it has complied with the code sections referenced in that it has collected and retained social security numbers for applicants and licensees and is in a position to provide information when requested by DHR. The code sections say that the social security numbers may be collected upon application **OR** renewal. We do not believe the intent was to require both and certainly not to do it again and again and again. That does not make sense to the public we serve and it subjects the public's identity security at risk. In view of the Audit report the Real Estate Commission adopted a resolution requesting a reconsideration of the Attorney General's Opinion upon which Examiners based its citing of the significant issue. That request and the basis for it are attached.

Significant Issue 2011-02

The bases of this issue are economic cycles and related business activity external to the Real Estate Commission. It has long been recognized that economic cycles impact examination numbers and the subsequent number of applications for temporary and original license issuance. It is the primary reason when Real Estate Commissioners in conjunction with Alabama Association of Realtor leadership in 2001 when it requested the legislature to increase fees that a realignment of the fee structure remove the reliance on examination fees and place a greater dependence on renewal fees. To date this has served the Commissions planning for sustaining its ongoing and developing regulatory program and has accommodated the current downturn in revenue by our being able to draw from funds reserved in investment.

We trust these will be found adequate to satisfy the interest of the Committee.

Very truly yours

A handwritten signature in black ink, appearing to read "D. Philip Lasater". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

D. Philip Lasater
Executive Director

C Commissioners